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THE PRESIDENT, CONGRESS AND LEGISLATION

BY  
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# THE PRESIDENT, CONGRESS AND LEGISLATION

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## FOREWORD

THE ceaseless current of comment which Congress stimulates furnishes eloquent evidence of the vital place which it occupies in our national life. Much of the discussion is critical if not deprecatory. This is natural, perhaps inevitable. Congress attracts greatest attention when it is least amenable to executive wishes. When the President finds Congress in a receptive mood, his legislative program is enacted into law in relative obscurity. It is only when Congress seeks to assert its prerogatives that resulting frictions in the legislative machinery produce sufficient disturbance to attract attention.

According to its own view of the governmental process, Congress more nearly fulfills its true role when it passes independent judgment upon a legislative problem without according special consideration to the recommendations of the President. Those who seek to smooth the legislative process by persuading Congress that its greatest role should be that of discussing and approving the proposals of the administration with a minimum of change have not made great headway among those chiefly concerned—members of Congress.

While this controversy continues, some benefit may be derived from a survey of recent legislation to ascertain more clearly what have been the relative contributions of the President and Congress in the case of the laws already passed. Under the system of presidential-congressional relationships that has existed heretofore, how important has each partner been? Has there been a tendency for Congress to lose ground to the President? It is hoped that this study will throw some light upon these questions.

For the suggestion that a study of this nature might be useful I am indebted to Professor Schuyler C. Wallace. His interest and friendly counsel have been a constant source of help and I am happy to acknowledge my special obligation to him. Professor Arthur W. Macmahon and Professor Lindsay Rogers have given generously of their time and advice.

My debts to others do not absolve me from responsibility for the statements and views expressed



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## CHAPTER I

### INTRODUCTION

SINCE the turn of the century the increasing importance of the President in the legislative process has received almost continuous discussion. The emergence of the Chief Executive as a force in the initiation and formulation of legislation is, in fact, primarily a twentieth century phenomenon. When Woodrow Wilson wrote his classic treatise, *Congressional Government*,<sup>1</sup> in 1885, he detected little tendency on the part of the President to take an active hand in shaping legislation.

It is true that some earlier presidents had conceived their responsibility broadly enough to include legislative leadership. Because of his great personal prestige, Washington was influential with Congress throughout his administration, but he did not take an active part in legislation. However, his Secretary of the Treasury, Alexander Hamilton, was a staunch admirer of the British parliamentary system and thought of himself as a sort of prime minister in the Washington administration; during the five years he served as Secretary of the Treasury he did much to put his theory of office into practice. Washington seemed content to have Hamilton take the initiative, notwithstanding the increasingly bitter objections raised by Jefferson and his associates. Hamilton was effective. His several state papers served as the basis for laws which established American governmental policy on a number of important subjects. In spite of its growing reluctance, Congress could not resist the potent combination of information and concrete proposal which has ever been the special advantage of the executive. Thus it is seen that at the outset of the new government the pattern of a strong executive taking the initiative in submitting to the legislature a program for their consideration and approval was effectively employed.

<sup>1</sup> Boston, Houghton, Mifflin and Company, 1885.

With the advent of Jefferson, the Hamiltonian concept of executive leadership was scrapped. In its place Jefferson instituted his own system of party control which was less direct but not less effective than the more obvious methods of Hamilton. By taking care to insure that the key positions in both houses of the Congress were held by party men of his own choosing, Jefferson established a politically integrated organization that has never been surpassed.

Within the first twenty years of our government forceful and skilled executives had thus demonstrated that our system of mechanical checks and balances need not constitute insurmountable barriers to executive-legislative cooperation in legislation. During the succeeding years, however, the lessons so effectively presented at the threshold of our governmental development were largely wasted. Only occasionally did we have a President who consistently chose to seize the initiative and guide the Congress in the formulation of a legislative program for the country. Andrew Jackson possessed the vigor and resourcefulness of his predecessors and his skill in party organization enabled him to build up the first truly grass-roots organization in the country. His influence with Congress would have enabled him to attain almost any legislative program. But legislation was not the chief need of the time. Jackson did not favor elaborate statutory regulation. His influence upon legislation was overshadowed by his acts in pursuance of his executive powers.

Lincoln showed small regard for the nice distinctions between legislative and executive power once he decided upon a course of action which seemed desirable for the prosecution of the war. He, however, did not depend primarily upon his ability to get the Congress to do his bidding. Instead, he chose to attain his objective through executive decree without resort to Congress. In this fashion he would secure the substance of what he sought and leave it up to the Congress to take such action as it saw fit to legalize what he had done. As



a wartime expedient this method had the merit of being effective; its potentialities in time of peace, however, seem limited.

The next dynamic occupant of the executive office was Grover Cleveland. He brought to the presidency a vigor which had been markedly absent since the death of Lincoln. His conception of presidential-congressional relationships, however, was essentially negative. Extremely jealous of the independence of the executive, he was quick to resist any action which suggested infringement upon his prerogatives, but he hesitated to take the initiative in pressing for legislation. That he did assert himself in one or two instances, such as the repeal of the Silver Purchase Act of 1890, only serves to emphasize the exceptional character of these occasions. His administration, marred by the constant friction resulting from the absence of a working majority in one or both houses during the greater part of his two non-consecutive terms, was more notable for the unprecedented number of bills vetoed than for the constructive legislation enacted.<sup>2</sup>

It was only when Theodore Roosevelt came into power that the philosophy of the executive dominant in legislation became a reality. During his seven years in office, Roosevelt invested the presidency with a dramatic and aggressive personal spirit. After the Taft interregnum, Woodrow Wilson's particular contribution was a more deliberate and a more effective party leadership. Finally, the multidimensional leadership of Franklin

2 All presidents have upon occasion found it necessary to resort to the veto. It is probably true, however, that the presidents who have been most successful in guiding legislation have not laid major stress upon the veto but have chosen rather to rely more heavily upon less extreme measures. In a sense, the veto, when exercised, indicates that the President has failed in his efforts to gain congressional acceptance of his program.

The veto power need not necessarily be employed exclusively for negative purposes. Through its threatened use the President may sometimes persuade Congress to accede to his wishes. The effectiveness of the veto as a bargaining device depends largely upon the political skill of the President. It is but one of several leverages upon which he may draw in his dealings with Congress.

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Roosevelt did much to create the impression that the congressional role in legislation had become definitely secondary.

Those who insist that the President has become chief legislator<sup>3</sup> can offer persuasive evidence to support their thesis. Theodore Roosevelt's record in railroad and conservation legislation, Wilson's successful efforts in behalf of tariff, banking and business regulation, and Franklin Roosevelt's achievements in many fields of legislative activity are common knowledge. All three of these men were forceful personalities who refused to accept a limited view of their duties and responsibilities. Each came into office at a time when the social and economic development of the country had rendered existing laws obsolete and the need for forward-looking legislation was acute. Congress alone was seemingly unable to produce results. In each instance the advent of the new President was accompanied by significant legislation and there can be no question concerning the genuineness of his contribution. Without his catalyzing influence Congress would not have succeeded in bringing its labors to fruition. But it should be kept in mind that the President's contribution was fundamentally that of making Congress effective, rather than of creating something himself.

In the United States, legislation is characteristically a collegial process in which the role of the Congress is no less important than that of the President. During periods when the Chief Executive assumes the initiative, the partnership between the executive and the Congress operates more efficiently. This does not mean that Congress has become less important. The legislative process is not like a see-saw where as one end goes down the other must automatically go up. It is, rather, like a gasoline engine which operates most efficiently when all of its cylinders are functioning. When the President becomes unusually active, there is a tendency to assume that the congressional cylinder has ceased to function. Such is not necessarily the case.

<sup>3</sup> The term was given general currency by Dean Howard Lee McBain in his trenchant book, *The Living Constitution* (New York, Macmillan, 1927).

The concept of presidential dominance in legislation comes in part from the tendency of the press to magnify his every action. Whatever the President does is sure to receive full coverage in the morning papers throughout the nation while the deeds of Congress receive relatively less space. This is natural. It is easier to follow the moves of one man than it is to trace the day-by-day developments of multitudinous committees, not to mention individual congressmen. For example, a law is finally enacted, after months of committee work, debates, and conferences. If it is of particular interest to the President, he will usually make some public statement when he attaches his signature. Thus his association with the bill is fixed in the public mind. Not only does the public receive an exaggerated idea of the President's contribution, but it also tends to minimize and soon forget those instances where important bills become law without benefit of executive assistance. Even where a controversial measure is passed over a presidential veto, it frequently happens that the bill itself and Congress are forced into the background by the concentration of the spotlight upon the White House.

It does not detract from the importance of the President to point out that this tendency to magnify his participation to the exclusion or neglect of Congress distorts the facts and creates impressions that are not only false but dangerous. The spectacular examples afforded by taking a few highly publicized cases from the careers of our most aggressive presidents should not be given undue emphasis. Further investigation shows that the impressions created by these headline incidents lose much of their substance when they are considered in their proper context. Take, for example, the case of Theodore Roosevelt. No President ever entered the White House with greater energy and enthusiasm for making his administration felt. He believed in action and his conception of the responsibility of his office did not admit of a passive role in legislation. The industrialization of America had gone ahead rapidly for more than thirty

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years during which the influence of the Federal Government had been relatively unimportant. Roosevelt was not so geared mentally or emotionally that he could stand idly by when there was so much to be done.

He struck out in all directions and his enthusiasm was infectious. Through a skillful utilization of the press he was able to monopolize public attention whenever he spoke and this was often. But it is essential to distinguish between Roosevelt, the talker, and Roosevelt, the doer. He filled his annual messages to Congress—enormous documents, frequently running to forty thousand words—with general suggestions that laws be enacted in multitudinous fields, literally spraying his proposals over the entire panorama of human activity. The messages were interesting illustrations of the range of Roosevelt's interests and the virtuosity of his mind, but they were not always of great value to Congress as solid substance from which essential legislation could be fabricated. Intermixed with proposals which were of immediate need and importance were suggestions which were neither politically nor practically feasible for at least thirty years. His messages were platforms of ideals rather than blueprints for action. Moreover, the number of specific major laws which Theodore Roosevelt endorsed and pushed through to completion is less than one would suppose from reading the newspaper accounts of the day. In the case of several of the most important laws attributed to him, someone other than he was the innovator. Despite this fact, Theodore Roosevelt made a significant contribution toward the development of the concept of the presidency as a dominant influence in legislation. In certain instances his influence upon the substance of the law itself was not less important. He was instrumental in shaping the content of some of our basic railroad and conservation legislation, to mention two fields in which he exhibited the most continuous interest. Through his constant reference to such immediately unattainable laws as limitation of hours for railroad employees, compulsory investigation of labor disputes, and

a graduated inheritance tax, he may also have planted the seed which was to sprout and mature at a later time. But Roosevelt did not monopolize the legislative output during his administration, nor did he realize the potentialities of his position to the full.

Woodrow Wilson was the first President to develop systematically the legislative powers of his office. Coming in a period of peace and prosperity, his first administration offered an unusually favorable climate in which to test the theory of presidential synthesis and he was equipped by training, experience, and purpose to develop his concept of the office to its fullest. His vision was broad; his conception of his office noble; his program was soundly grounded in theoretical principle rather than devised in political expediency. He believed strongly that the President should accept responsibility for legislative leadership. To render the scene even more favorable, there was no threatening emergency demanding speed at the expense of careful deliberation. He came into office after a long period of Republican government, unembarrassed by too many political obligations and with safe majorities in both houses. Finally, he was entirely free to determine the desirable order in which the various segments of his legislative program should receive consideration. He settled upon the wise plan of one thing at a time. Accordingly, he achieved his objectives in tariff reform before he devoted himself to banking reform. With the passage of the Federal Reserve Act, he turned his attention to anti-trust problems. Before this law was more than well under way, foreign affairs, first in the form of the Mexican controversy and then the European War, intruded to monopolize his attention and energy. It is impossible, consequently, to draw definitive conclusions from the limited evidence afforded by Wilson's administration. Many additional laws were enacted between 1913 and 1921. Some of these were passed under the stress of wartime conditions; others came into being during time of peace. Viewing them as a whole it is probably true that they represent all shades of presidential-congressional relations. It seems not unlikely that no other President has shown so great

a range of effectiveness—and impotence—in his relationships with the Congress. Truly, the extremes within his administration are greater than are those to be found between almost any two other administrations that might be compared.

The administration of Franklin D. Roosevelt has frequently been cited as the ultimate extension of the theory of presidential leadership, although occasions occurred when White House leadership was notable either by its absence or because of its ambiguous character. During the hundred days of the special session in 1933, the prevailing impression was that of a President skilfully directing the Congress in suddenly conceived and hastily executed attacks upon the depression. The half-dozen major enactments of this brief period were to be followed by many more during the next few years. Most of these proposals appeared to come from the President rather than from the Congress; but appearances were sometimes misleading. For example, upon close inspection, the National Industrial Recovery Act reveals itself to be little more than a presidential response to a movement within Congress in the direction of even more radical legislation. Similar cases might be cited in the fields of banking, national defense, and labor legislation. Executive influence was much in evidence throughout Franklin Roosevelt's first administration—in the sense that Congress as a whole and congressmen as individuals were aware of constant pressure from the White House to vote affirmatively on the steady stream of "must" measures pouring in upon them. Vigor, positive statements, and desire for action were certainly present. Indeed, the passion for action almost became a fetish during this period until in some notable instances, of which the National Industrial Recovery Act is but one, speed seemed to have become an end in itself.<sup>4</sup>

<sup>4</sup> It is easy to criticize in retrospect the reckless pace of the special session in 1933. As a matter of fact this very speed was one of the most hopeful omens to a frightened and almost panicky public whose confidence in government had been badly shaken by the seeming paralysis with which it had been seized. The need for immediate, unequivocal action was acute. The willingness to step out forthrightly must be credited to the New Deal's account.

The Roosevelt brand of executive leadership revealed some weaknesses. Much of the New Deal legislation was opportunistic rather than planned, fortuitous rather than well-considered; a series of coups calculated to steal the thunder of some threatening opposition rather than a measured implementation of successive stages of a broadly conceived program. In some instances measures were forced upon the administration by impending congressional action. The National Industrial Recovery Act, the Social Security Act and the National Labor Relations Act may serve as examples. This contingency necessitated speedy action precluding the possibility of careful study or considered action by the administration forces. Frequently, the proposed measure would be only half-digested, often a loosely tied together series of provisions selected from several unrelated schemes which prior to their forced union had not so much as a common point of view in their genesis.

In other instances the action of the President while direct and unequivocal was involuntary, even unwilling. One immediately calls to mind the Thomas Amendment to the Agricultural Adjustment Act of 1933 and the Silver Purchase Act of 1934. In each of these cases the bill was written by the administration and accepted by Congress with little modification, but the administration did not act of its own free will. Had it had its way there would have been no such legislation. The fact that a bill was passed was in a certain sense a congressional victory in spite of the fact that the legislation achieved fell considerably short of the aspirations of its sponsors. When the administration is obliged to construct and push through a bill of its own in order to prevent Congress from passing legislation in a field in which the administration would prefer to have no legislation whatsoever, the question of whose will prevailed is difficult to determine. Thus it is clear that the widespread belief that the White House is the source of most modern legislation is exaggerated.

The time would appear to be opportune, consequently, for a detailed study of the major legislative enactments of the last

several decades with a view to discovering the relative contribution that has been made by the President and by the Congress in their formulation. But to be convincing what should be the method of such a survey and what period should it cover?

The legislative history of the New Deal period would provide a unit at once manageable and accessible in that the facts about it are in most cases readily available. Furthermore, by confining the investigation to such a limited period every important law could be examined and it would not be necessary to resort to the sampling method. But there are other considerations which militate against this choice. In the first place, interesting and important as such an analysis of the legislative history of the New Deal would be, it would prove little because there would be no basis for comparison. The influence of only a single President would be involved and this during a time of depression and emergency. Although a study confined to the Roosevelt administration would be extremely worth while, it would not provide an answer to the question here under consideration.

For this reason it is believed that a study more limited in coverage of laws but more comprehensive in its time span would be more revealing.<sup>5</sup> The last half century has been the most significant so far as the role of the Federal Government is concerned. Except for a few important laws, among which might

<sup>5</sup> In the quest for more factual information about the relative share of executive and legislative influence in initiating and formulating public policy, a number of approaches are possible. In his analysis of executive influence in military policy (*Executive Influence in Determining Military Policy in the United States*, Urbana, University of Illinois, 1925), Howard White confined himself to a vertical study of a single field from the very beginning of our government to the end of the first World War. This procedure permits a more integrated treatment and achieves a greater continuity than is possible in a horizontal study of many fields of legislation during a shorter period of time. White's selection of military policy for this study may have further narrowed his conclusions for, as he points out in his introduction, this particular field is in many ways *sui generis*. In most instances the war powers of the President have been exercised only in time of war and, despite no specific constitutional mandate, the President does enjoy greater influence when the country is at war. Generalizations as to the President's influence in other fields can be drawn from a study like White's only with great caution.



be mentioned the Morrill Act of 1862, the reconstruction legislation of the sixties, and some currency legislation, the period of federal intervention in economic and social matters does not antedate the 1880's. By examining a cross section of recent federal legislation on a relatively broad front, it is hoped that a more accurate picture of the legislative process will be afforded. Consequently, approximately ninety major enactments of the past half century have been studied for the purpose of discovering their origins.

These laws fall into ten categories: agriculture, banking and currency, business, government credit, immigration, labor, national defense, natural resources, railroads, and tariff. Within each of these general fields several federal laws of national import have been passed during the period under investigation. Some have been passed under the stress of emergency conditions, others in periods of comparative quiet. Some have been enacted during the administrations of aggressive Presidents, others have come into being under Presidents whose attitude toward legislation was more or less passive. The fields chosen do not embrace all federal legislation and the specific acts within these fields are necessarily selective. The number of important laws passed in several of these fields has been large. Any attempt to select the ten most important is to invite challenge because it is impossible to establish a completely objective standard. Every effort has been made, however, to select those acts which seemed to constitute a representative cross-section of each particular field.

The fields selected were chosen because they embraced legislation extending over the greater part of fifty years and thus provided a basis sufficiently broad that it should be possible to draw useful comparisons. Among the important fields not included are social legislation, legislation affecting governmental organization and structure, relief legislation and tax legislation. In the case of each of these there were persuasive reasons for omitting them.

Social legislation is not in reality a unified field. Except for the food and drug legislation of 1906 and 1938 and the meat inspection law of 1906, the other laws which would fall under this heading were such diverse ones as the law outlawing yellow margarine, that prohibiting the manufacture of white phosphorous matches, and the white slavery law in 1910.

Legislation affecting the governmental structure was excluded for a different reason. Inextricably entangled with issues of tradition and vested interests, it represents one of the most stubborn of all legislative problems. The relationship of the President and the Congress in the history of governmental reorganization merits careful study. It is, however, *sui generis* in that it does not fall within the broad sphere of regulatory legislation as do the ten groupings under consideration.

Federal unemployment relief legislation is strictly a product of the depression; its origins barely antedate the New Deal. Before 1930 this field had been left to the state and local governments. When the depression continued to throw increasing numbers upon the relief rolls, state and local resources could not stand the strain and the Federal Government was forced to take a direct hand. Congress rather than the President took the first step in this direction in 1931. Taxation is a field in itself and should be studied separately. Were it to be included in this survey, it would be almost impossible to select particular statutes.

It seems worth pointing out, however, that of the omissions mentioned above, at least two—governmental reorganization and taxation—have enjoyed special congressional attention for many years. Executive attempts to achieve reorganization in the physical structure of the government have almost inevitably disintegrated before congressional attack. Such changes as have been suggested have, it is true, usually emanated from the White House, but with rare exceptions they have survived only at the price of extensive congressional modification. In the case of tax laws, the prevailing procedure has been congressional

draftsmanship with minor executive influence. A few exceptional cases of more active executive participation serve only to emphasize the normal pattern.

Among individual statutes omitted are two which are prominent mileposts in American legislative history—the Tennessee Valley Authority Act of 1933 and the Social Security Act of 1934. These epochal laws were not included because they did not fall into any well-defined category in which there has been a relatively continuous stream of federal legislation. An examination of both of these laws reveals, however, records no different from that of numerous other laws enacted during the Roosevelt administration. Presidential endorsement of a proposal which had been before Congress in one form or another for several years brought the laws in question into being. The administration did not confine its influence to that of supplying motive power because it participated actively in the final drafting, but the germ of the new laws had been supplied by Congress.

The chief omissions in this survey of legislative case histories have been noted. It is believed that the categories and statutes selected are representative and that the conclusions to be drawn from their analysis would not have been substantially affected had all legislation been included.

It is, of course, realized that in the final analysis the ideas for legislation originate with neither the President nor the Congress. Most legislation is in reality the product of forces external to any governmental agency. The proposal for governmental intervention, whether it comes from the President, the Congress, or the department concerned, can generally be understood to have come from some group much more directly interested in the specific results of the proposal than are any of these agencies of government. The governmental agency thus becomes, as the term implies, merely the agent through which the proposal is made rather than the true initiating body. But this does not mean that it is entirely unrealistic to allocate responsibility as between the President and the Congress. Grant-

ing the thesis that most legislation in varying degrees has its origin in some private group rather than in any governmental body, the fact remains that pressure groups for all their importance cannot enact law themselves. This is a prerogative which remains the exclusive possession of the legislative and executive departments of the government. Unless they act the pressure groups fail to accomplish their objectives. For this reason the measures surveyed here will not be attributed to pressure groups unless the President and Congress have so completely abdicated that the outside interests have in effect written the legislation in question. Nevertheless, because of the fact that pressure groups of one kind or another are present in the life process of every major legislative enactment, it is of prime interest to ascertain in the case of each law passed, the degree to which the President or the Congress was influenced by external pressures.

There arises also the question of identifying laws as presidential when they are in fact the product of an administrative agency. In many cases where a bill is said to be presidentially inspired, the originator has actually been the department or one of its subdivisions. The administrative officer lives with his job. In his daily concern with the raw material of administration, at the point where the government and the public meet, he becomes keenly conscious of the inadequacies, ambiguities, and lacunae of the law he administers. Similarly, he is exposed to the dissatisfactions and aspirations of all the private individuals and groups which fall within his jurisdiction. Situated thus, the administrative official's interest in and promotion of proposed legislation frequently anticipates presidential action by months and even years. Only after extended periods of nurturing and perfecting does the proposed bill eventually reach the stage where it penetrates the sphere of presidential consciousness. If the President is persuaded that the proposal has merit and decides to sponsor it, should the bill now be designated a presidential bill? Moreover, this period of preliminary action takes many different forms. Is it accurate to lump into the same cate-

gory the Securities Act of 1933, the Reciprocal Trade Agreements Act of 1934, and the Soil Conservation Act of 1936, and classify them as presidential in origin? Although President Roosevelt favored each of these important acts and employed the tools at his command to assure their passage, his participation in the vital phases of their development and his influence upon the substance of the completed act differed materially in each case. In the case of the Securities Act Mr. Roosevelt personally took an active interest in the steps leading to its passage. For the most part he chose to work through designated representatives, and most of his decisions on points of policy concerning the bill in question were influenced if not determined by his advisers. But it was the President who decided which advisers should have precedence in this matter, and he had several sets from which to choose. It is of especial interest in this case that these advisers belonged not to the regular administrative hierarchy but to the *ad hoc* ever-changing circle of personal advisers upon whose counsel the President so often relied.

By contrast, the background of the Reciprocal Trade Agreements Act reveals an entirely different pattern of relationships. Cordell Hull's interest in the tariff and his definite convictions about it long antedated his appointment as Secretary of State. His espousal of reciprocal trade agreements dates almost from the day he took office and the Act itself was in a very real sense an instrument of his own fashioning. The President was sympathetic because the bill was in harmony with his own views on foreign policy, and he cooperated to the utmost, even sending a special message to Congress to smooth the passage of the bill which had been drafted in the State Department.

The Soil Conservation Act of 1936 offers still a third variation in the mosaic of presidential-administrative relationships *vis-à-vis* proposed legislation. Technical experts within the Department of Agriculture, in consultation with other technical experts outside the government service, conceived and implemented the device of soil conservation as a mechanism for

controlling agricultural production. The idea was an interesting mixture of sincerity and sophistry. A nation-wide program of soil conservation had long been an ideal toward which scientific agriculturists had striven without much hope of success. The invalidation of the AAA by the Supreme Court in 1936 suddenly made the soil conservation idea feasible and the experts reaped an unexpected windfall. In this instance the President was intent upon finding some means to circumvent the decision of an unfriendly majority on the Court. He cared little about the exact *modus operandi* so long as it bid fair to withstand judicial scrutiny. When his legal advisers assured him that soil conservation seemed least vulnerable among the several possibilities, Mr. Roosevelt's enthusiasm for soil conservation increased. His recommendation to Congress was the deciding factor in the new bill's success and the Act was indisputably the President's project but the technical details had come from below the bureau level within the Department of Agriculture.

On what grounds can bills such as those just considered be denominated presidential in origin? The view is taken in this study that these and similar bills merit such classification because, first, they mark major changes in governmental policy, and, second, they have received the personal endorsement and active support of the President. Most bills passed during a President's term of office and signed by him meet with his approval. At least they do not excite strong antipathy. Of the hundreds of bills which become laws during each year of a President's administration, however, comparatively few mark major modifications of national policy and still fewer receive his active support. This support usually takes the form of one or more of the following: a special message to Congress; public announcement of his desire to have the bill passed; a White House conference with those who are handling the bill in Congress; a radio appeal to the country; behind the scenes activity by the President's congressional contact agents. When the President considers the issue important enough to employ his political arsenal in its behalf, the bill has been identified as his

even though the idea or principle which it contains was initially suggested by someone else inside or outside the government. It is not intended to minimize the importance of the never-ceasing flood of amendatory legislation which is the normal by-product of the administrative departments year in and year out. Much of this annual output, commonly termed perfecting legislation, is of vital and far-reaching importance when measured in terms of its effect upon the operation of the original act. Its initiation at the instance of the administrative expert who has found further legislation desirable from his intimate contact with the day-by-day functioning of the parent act, and its careful consideration by the subcommittee which customarily watches over that particular agency, take place in comparative obscurity. When agreement is reached between these two guardians of the public interest, those on more exalted levels usually approve the changes in question without pause or ceremony. Because of its significant, even fundamental importance, this little appreciated aspect of the legislative process merits careful and dispassionate examination but it does not fall within the boundaries of this study.

In any attempt to identify the sources of important laws, it is necessary to distinguish among various phases of the legislative process. At least three fairly well defined stages are present in the evolution of every piece of major legislation. The first step in the long process which ultimately culminates in the enactment of a new piece of major legislation is the recognition of an area of need. In one or both houses a member, sometimes several, may introduce legislation relative to some problem in a given field. There may be several proposed remedies reflecting a fairly general interest in the need for federal regulation of securities, public utilities, unemployment, banking or whatever the subject may be. From various sources—their own reading and study, interest groups, administrative officials, etc.—members of Congress receive suggestions for meeting the problem. Some of these suggestions are fragmentary, half-baked; others are in varying stages of advancement

and completeness. Bills are introduced by several congressmen; these bills also range the spectrum in variety, practicability, and comprehensiveness.

Whether hearings are held will depend upon a number of factors—the state of the calendar of the committee or committees in question, the attitude of the chairman, and the volume of interest in the subject. The attitude of the President will usually have an important bearing although this does not inevitably follow. Occasionally legislation will result from the first bills that are introduced. When this occurs, a bill will travel the route from introduction to final passage within the span of a single Congress—that is, within two years. To some this may seem an inordinately long time; actually, when compared with the legislative history of most important acts, it is well below the average.

The more normal experience is that after hearings and committee consideration, the original bill is replaced by one or more new bills drafted to meet defects or omissions. At this stage—which may easily drag out for months or years—many things can happen. The channels may be cleared for a speedy passage. The bill may be definitely shelved in favor of some other bill. It may be postponed. It may remain alive but temporarily immobilized for some reason or other. It may be defeated by unfriendly administrative pressure. These are but a few of its possible fates.

The next stage occurs with the initiation of the action which leads directly to the passage of a bill. Suppose that a bill regulating a particular area has the common experience of many other good bills and enters into a state of suspended animation of indeterminate duration. At some subsequent period—which may occur weeks, months, or even years later—the administration decides to press legislation in this field. An administration bill may be introduced. It may or may not follow the outlines of the bills previously introduced. Or the administration may suddenly decide to throw its support behind a bill that has been constantly before Congress for many months, too strong to be



cast into the discard but lacking the additional push necessary to win its way through. Just as possibly the administration may breathe new life into some legislative proposal which had lapsed into comparative quiescence. In any case, whatever the variation may be, the immediate train of events leading to final passage has been set in motion. The series of steps which precede the final enactment are not always dictated by the executive. Sometimes legislation materializes without presidential intervention. This does not occur frequently, however. Within the Congress the competition for preferential treatment is so keen and so even that any legislation which has the good fortune to receive an additional fillip from the White House enjoys an enormous advantage.

Phase three, determination of the exact substance of the completed act, is the final step in the legislative process. Although the considerations which will be decisive in determining the substance of a particular act must necessarily vary according to the situation, it will be most extraordinary if the end product does not bear rather close resemblance to some of its congressionally sponsored predecessors. Certainly the previous hearings, investigations, and committee sessions will have had some influence. It may also be expected that the views of the President and his advisers will have been taken into account in the final draft. Undoubtedly certain sections will represent compromises and these may actually be the only wholly new feature in the entire bill.

To which branch of the government—the legislative or the executive—does the bill owe its existence? Would it have materialized in the same form without the participation of both? Was one more essential than the other? It is hoped that answers to these questions will be found in the following case histories.

## CHAPTER II

### BUSINESS LEGISLATION

THE decade preceding the enactment of the Sherman Act was one of gradually expanding consciousness of the growth of big business with its attendant dangers to the traditional American system of competitive equilibrium.

#### THE SHERMAN ACT OF 1890

On July 10, 1888, without fanfare or publicity Senator Sherman introduced a resolution which the Senate adopted without discussion.<sup>1</sup> It directed the Senate Finance Committee to inquire into and report in connection with any revenue bill such measures as it should deem necessary to prevent all attempts to curtail competition in business. Senator Sherman's action was not in response to persistent public clamor. It did not reflect any generally recognized demand for legislative protection from monopoly. Indeed, Congress had received but a single petition on the subject—a memorial from the Kansas legislature. Trust regulation was not a burning issue.<sup>2</sup>

Senator Sherman followed his resolution a short time later with the first anti-trust bill to be introduced into Congress.<sup>3</sup>

<sup>1</sup> *Congressional Record*, 50th Cong., 1st Sess., p. 6041, July 10, 1888. The first trust bill in the Senate was introduced in May, 1888. It prohibited combinations for the control of patented articles. In January, 1888, the House directed its Committee on Manufactures to investigate oil, sugar, whiskey and cotton-bagging combinations. The committee made two reports, H. Report 3112, 50th Cong., 1st Sess., January 25, 1888, and H. Report 4165, 50th Cong., 2nd Sess., March 2, 1889, but recommended no bill. See Theodore E. Burton, *John Sherman* (New York, Houghton Mifflin Company, 1908), pp. 353-356, and W. W. Thornton, *A Treatise on The Sherman Anti-Trust Act* (Cincinnati, The W. H. Anderson Company, 1913), pp. 1-30.

<sup>2</sup> This session of Congress witnessed the introduction of four bills in the Senate and twelve bills in the House dealing with trusts. In the three preceding sessions no anti-monopoly bills had been introduced in either house.

<sup>3</sup> S. 3445, 50th Cong., 1st Sess. Introduced August 14, 1888, and referred to Committee on Finance, Senate. Reported out with amendments September 11, 1888.

No action was taken on the bill. The first session of the Fiftieth Congress adjourned with the trust problem still virtually a dead issue. The failure of either major party to play up anti-trust legislation during the presidential campaign of 1888 is further evidence of the indifference of the public at this time. Both parties, it is true, did have vague planks pledging the regulation of trusts, but the tariff and currency issues overshadowed everything else. In his monograph on "The Federal Trust Policy", J. D. Clark sums up the situation in a single sentence: "The trust problem was not only not a major issue in the ensuing campaign, but it was wholly overlooked."<sup>4</sup>

Nevertheless, on December 4, 1889, Senator Sherman introduced another bill regulating monopolies.<sup>5</sup> It was a very short bill of three sections, quite obviously intended to serve as a basis of future consideration. The bill was referred to the Senate Finance Committee and reported out January 14, 1890. Debate began February 27, 1890, but was postponed until March 21, 1890, during which time the Senate Finance Committee modified many of the bill's provisions and restricted its scope. During the debate several attempts were made to refer the bill to the Judiciary Committee on the ground that it involved

<sup>4</sup> John D. Clark, *The Federal Trust Policy* (Baltimore, Johns Hopkins Press, 1931), p. 35. Professor Clark goes to some pains to demonstrate that antitrust legislation was not a paramount issue either in 1890 or in the decade preceding. He bases his conclusion upon an examination of the volume of discussion and comment on trusts and monopolies as reflected in the petitions, bills, resolutions, and debates in Congress, and on the number and importance of articles appearing in the newspapers and periodicals of the period. Pointing out that trusts received nothing like the amount of journalistic attention that had been accorded the railroad issue or the tariff, he concludes: "The Sherman Act was not forced from Congress by an hysterical public nor was it the work of a body of excited representatives of the people; the public was not hysterical and the members of Congress were so little excited that few of them cared to take an active part in the legislative process. It was the result of calm consideration by a few congressional leaders and their colleagues were willing to follow them and to expedite the passage of the law because the situation obviously required federal intervention." See pages 27-51 for a full account of the events preceding the enactment of the antitrust law.

<sup>5</sup> S. 1, 51st Cong., 1st Sess.

issues of constitutionality which fell within that committee's jurisdiction. Senator Sherman resisted several such attempts but so many amendments were added from the floor that the bill became hopelessly complicated and a motion so to refer it finally prevailed by the narrow vote of 31 to 28 on March 27. Although the bill was entirely rewritten, it was still designated S. 1, and was reported out on April 2, 1890 by Senator Edmunds, Chairman of the Judiciary Committee.<sup>6</sup> It was debated briefly and then passed by the Senate without amendment on April 8, 1890, by a vote of 52 to 1. It went to the House on April 11, where it was referred immediately to the Judiciary Committee and reported out by that committee without amendment on April 28, 1890.<sup>7</sup> Debate began under a special rule on May 1, and, with a single amendment, the bill passed the House the same day without opposition. After a prolonged discussion it was agreed in conference that the bill as originally reported by the Senate Judiciary Committee should stand. In the Senate the conference report was agreed to without opposition on June 18, 1890; two days later the House recorded its approval by a unanimous vote. Upon its signature by the President the Sherman Act had become law.

#### BUSINESS LEGISLATION DURING THEODORE ROOSEVELT'S ADMINISTRATION

The bill creating the Department of Commerce and Labor with the amendment establishing a Bureau of Corporations was the only important legislation directly affecting business passed during Theodore Roosevelt's administration.<sup>8</sup> Mr. Roosevelt referred repeatedly to the trust problem in his annual messages and asked for legislation to prevent unjust discrimination and over-capitalization, two evils which he considered to be at the base of monopolistic practices. The Bureau of Corporations amendment was added at his request because he felt that

<sup>6</sup> Senate Document No. 147, 57th Cong., 2nd Sess. This document contains a record of all bills and reports on antitrust legislation of this period.

<sup>7</sup> *Ibid.*

<sup>8</sup> S. 569, 57th Cong., 2nd Sess.

through it he could uncover and publicize the financial structure and trade practices of large business combines and in this way achieve his objective of purifying the trusts.<sup>9</sup>

Roosevelt did not press for vital amendments to the Sherman Act nor did he consistently lend his support to the efforts of others so engaged. In 1903, after Congress had considered the Department of Commerce and Labor bill, the House debated and passed the Littlefield bill which contained stringent amendments that would have greatly strengthened the Sherman Act.<sup>10</sup> House action was strongly influenced by the belief that the Littlefield bill represented the views of the administration. When the bill went to the Senate, however, administration support was withdrawn and it was never reported out of committee.

What lay behind the President's decision not to press for vital amendments to the antitrust law is not entirely clear. In view of his remarkable success in forcing the Hepburn Act through Congress three years later in the face of much more sustained opposition, there seems little doubt that he could have obtained genuine improvements in the Sherman law had he so desired.

#### THE CLAYTON AND FEDERAL TRADE COMMISSION ACTS, 1914

The European War, beginning in the late summer of 1914, crowded the sharp struggle being waged over the Clayton Anti-Trust bill off the front pages so that an issue which had claimed headlines during the early months of 1914 finally became written into law in comparative obscurity.<sup>11</sup> President Wilson's

<sup>9</sup> *Commercial and Financial Chronicle*, LXXVI, 1380 (June 27, 1903).

<sup>10</sup> H. R. 17, 57th Cong., 2nd Sess.

<sup>11</sup> Information on the progress of the anti-trust bills prior to their consideration in Congress is surprisingly meager when the extensive discussion provoked by the trust message of January 20 is recalled. In truth the year 1914 was one of foreign orientation, for the occasional incidents which had occurred in Mexico throughout 1913 had by the early months of 1914 intensified to the point where military action appeared inevitable. By the time that our relations with Mexico had temporarily subsided the reverberations of the European War were beginning to absorb public interest.

message to Congress, on January 20, 1914, focused general attention on the trust problem, but this was by no means the initial move toward anti-trust law revision. General public dissatisfaction with the working of the Sherman Act of 1890 had been reflected in the discussions carried on in speech and press for several years.<sup>12</sup>

Within Congress the tide of anti-trust discussion had ebbed and flowed without ever quite attaining vitality. With the Supreme Court decision in the Standard Oil case on May 15, 1911, matters took a different turn.<sup>13</sup> Resolutions were introduced in both houses calling for investigation of alleged abuses of the existing law. The Senate Committee on Interstate Commerce under the leadership of Albert B. Cummins held hearings throughout 1911 and well into 1912. Its report on February 26, 1913, although it recommended no specific legislation, had substantial influence upon the law which was to materialize in the following Congress.<sup>14</sup> The Insurgent and Progressive forces in Congress urged anti-trust legislation as one of their chief objectives and the platforms of all three major parties in 1912 carried anti-trust planks of varied emphasis of intent and varying degrees of ambiguity.

Wilson's interest in monopoly reform had not been confined to his many speeches on the subject; it had been illustrated tangibly by his achievements as Governor of New Jersey. There, during his governorship, had been passed seven im-

12 Professor Clark, *op. cit.*, pp. 93-164, gives a careful and detailed account of the successive stages of the movement for modification and strengthening of the Sherman Act. He states that beginning in 1897 the topic was discussed publicly and officially with ever increasing intensity. Mr. Clark points out that although President Roosevelt immediately identified himself as the steadfast friend of the Anti-Trust Act, it was not until his seventh annual message to Congress in December, 1907, that he proposed a definite program for its reinforcement. From then until the end of his administration he pressed for many of the reforms that were eventually to find their way into the Clayton Act but his own efforts bore no immediate fruit.

13 Clark, *op. cit.*, p. 147.

14 Report of the Committee on Interstate Commerce, United States Senate, 62nd Cong., pursuant to S. Resolution No. 98, February 26, 1913.

portant bills dealing with business. These bills, popularly dubbed the "seven sisters", were looked upon as almost revolutionary—definitely in advance of legislation affecting business found elsewhere. It was understood, therefore, that trust legislation was an integral part of the Wilson program, not something suddenly fished out of his bag of tricks. His first year had been devoted to two other items on his agenda: tariff and banking reform; now he was ready to deal with trusts. He had already carried on numerous conversations with the Democratic leaders in both houses; from these conferences the general outlines of the prospective bills had been sketched out.<sup>15</sup> In anticipation of his message the House Judiciary Committee under the chairmanship of Representative Clayton of Alabama began hearings on December 9, 1913.<sup>16</sup>

Wilson's interest in monopoly reform had led him to devote much time and study to it. His New Jersey experience was supplemented by a rather extended exchange of ideas, in person and by letter, with Louis D. Brandeis, then perhaps the single best informed individual on this particular subject.<sup>17</sup> During this phase of his life Wilson was taking much greater advantage of the benefits of expert counsel than was to be the case later. Through his conferences with informed people in and out of government, as well as through much sustained personal attention to the subject, the President was equipped with an unusually thorough working understanding of trust problems when he presented his message recommending reform.<sup>18</sup>

His speech outlining the proposed legislation was written entirely by him.<sup>19</sup> Its explicitness made it clear that he knew

15 Ray Stannard Baker, *Woodrow Wilson: Life and Letters* (Garden City, New York, Doubleday, Page and Company, 1927-1939), IV, 372.

16 Hearings before Committee on Judiciary, House of Representatives, 63rd Cong., 2nd Sess., December 9, 1913, to April 6, 1914, p. 7.

17 Baker, *op. cit.*, pp. 357-358, 366.

18 Such was not the case with the Federal Reserve Act. Wilson was not a student of banking problems hence was compelled to rely more heavily upon the advice of others.

19 The speech is found in the *Congressional Record*, 63rd Cong., 2nd Sess., pp. 1962-1964, January 20, 1914.

what he wanted. After a general discussion of the proper relation between government and business, he specified five sore spots wherein legislation was needed: interlocking directorates, unfair trade practices, railroad securities, redefining the policy and meaning of the anti-trust laws, establishment of a trade commission. Although he had already made up his own mind, and although he was consciously practicing his theory of executive leadership, the bills introduced to implement his suggestions were drawn up by representatives of the legislative body; they were not drafted by the administration.<sup>20</sup> Whether this choice was deliberate or an accident it turned out to be a fortunate one for it later afforded Wilson an out when it became clear that rather comprehensive changes in the original program would have to be made.

Immediately following the trust message the four bills drafted by Representative Clayton were introduced into the House and hearings already begun by the Judiciary Committee were now continued with particular reference to these bills. These four bills: (1) establishing a trade commission, (2) forbidding interlocking directorates, (3) further defining the Sherman law, (4) prohibiting cutthroat competition, rebates, price discrimination, etc., together with a fifth (relative to railroad securities) which was to be introduced later, were regarded as embracing the proposals set forth in the message. The texts of four bills were made public by congressional leaders on January 22 with the announcement that interested persons were invited to participate in the hearings which were to follow.<sup>21</sup>

During the preliminary discussions of his trust program, President Wilson had conferred with the Democratic members of the Judiciary and Interstate Commerce Committees of both houses. Rumors of some internal dissension as to which committees would receive jurisdiction over the bill appeared frequently. A *modus vivendi* was reached when it was agreed that

<sup>20</sup> *New York Times*, January 9, 1914, p. 2.

<sup>21</sup> *Ibid.*, January 23, 1914, p. 1.



the trade commission bill would be handled by the Interstate Commerce Committees of both houses while the other parts of the program were to go to the Judiciary Committees.<sup>22</sup>

The trade commission bill was the subject of detailed hearings before the House Interstate and Foreign Commerce Committee and the Senate Interstate Commerce Committee.<sup>23</sup> Several weeks later when the decision was reached to consolidate the antitrust bills into a single measure, the trade commission bill retained its separate identity. Under the direction of Representative Covington, chairman of the House subcommittee, the commission bill underwent several complete revisions. President Wilson was much interested in the possibilities of a commission as an instrument for minimizing the frictions inevitable in governmental regulation of business. At first, however, he conceived the function of such a commission to be that of eliciting information only, not that of regulation. In harmony with this view, the bill which Mr. Covington introduced on April 13, 1914, which was reported out of committee the following day, was extremely limited in its scope.<sup>24</sup>

On May 19, 1914, the House approved a special order which provided that the trade commission bill should be considered before the Clayton bill.<sup>25</sup> The belief that the former was not seriously controversial was reflected in the allotment of only six hours for general debate to it in comparison to the sixteen hours allotted to the Clayton bill. House debate on the trade commission bill was in fact quite dispassionate. Except for the conventional partisan exchanges, little occurred to disturb the calm. There was some criticism from the Progressive wing because the bill contained no regulative powers but Mr. Covington and his associates were emphatic in their declarations

<sup>22</sup> *New York Times*, January 21, 1914, p. 1.

<sup>23</sup> Hearings before the House Committee on Interstate and Foreign Commerce, 63rd Cong., 2nd Sess., January 30-February 16, 1914. Hearings before the Senate Committee on Interstate Commerce, on S. 4160, 63rd Cong., 2nd Sess., February 26, 1914.

<sup>24</sup> H. Report 533 on H. R. 15613, 63rd Cong., 2nd Sess.

<sup>25</sup> *Congressional Record*, 63rd Cong., 2nd Sess., p. 8832, May 19, 1914.

that such provisions had no place in the bill. That controversy was largely absent is reflected in the fact that the bill was approved without record vote.

When the bill went to the Senate, however, it was immediately referred to the Committee on Interstate Commerce, and it underwent a marked change. Under the influence of Louis D. Brandeis, George Rublee and others, the President had materially modified his original ideas as to the proper functions of the proposed commission.<sup>26</sup> He had come to the conclusion that only as a positive agent with power to prevent unfair competitive practices on the part of business would the trade commission live up to his hopes.<sup>27</sup> He had communicated his revised views to Senator Newlands, chairman of the committee, and had requested that the necessary changes be made in the bill. This was done and the bill which was reported to the Senate contained a provision which not only prohibited unfair competition but empowered the commission to enforce the prohibition.<sup>28</sup> For more than six weeks the bill was debated vigorously. It passed with the stricter provisions intact. The conference report agreed to in the Senate September 8 and in the House September 10 retained the new language.

The period from January 22 when the texts of the Clayton bills were made public to May 6 when the single Clayton Omnibus bill was reported to the House was characterized by almost daily reports, frequently contradictory, of conferences, new drafts, revisions and additions to the forthcoming legislation. Hearings were resumed on January 29 to continue

<sup>26</sup> Clark, *op. cit.*, p. 178. See also Gerard C. Henderson, *The Federal Trade Commission* (New Haven, Yale University Press, 1924), pp. 17-28.

<sup>27</sup> The idea of a commission with strong regulative powers had been discussed widely in Congress long before Wilson accepted it. Senator Newlands had advocated such a commission repeatedly and had made numerous public utterances to that effect. See, for example, his letter to the Secretary of the Conference on Trusts, in Chicago, September 20, 1899, cited in Henderson, *op. cit.*, p. 19.

<sup>28</sup> S. Report 597, 63rd Cong., 2nd Sess.

through April 6.<sup>29</sup> More than a hundred witnesses appeared or submitted statements. A thousand pages of oral testimony was supplemented by more than five hundred pages of written argument. Important figures in business and industrial life were intermingled with some of the leading academic authorities on business and economics. The only important group conspicuously absent were the representatives of the government. Not a single government witness gave testimony during the public hearings. The failure of the administration to put itself on record through the public hearings is an interesting sidelight, the significance of which is open to various interpretations. Previous instances of administrative representation before congressional committees were common enough. There was nothing new about the practice; moreover, Wilson had already shown his low regard for precedent in executive-legislative relations. Had he desired to commit himself publicly there was nothing to deter him. It may well be that the decision to keep the administration position unrecorded during the formative stage was a deliberate one dictated by the strategic needs of the occasion. Through frequent conferences with the congressional leaders the President was certain that his views would be understood by them yet when the time came, if it did, when changes must be accepted, this could be achieved without the embarrassment of having to retreat from positions previously established and recorded.

It is impossible to prove that these tactics were the result of perspicacity rather than chance; they were, however, exceedingly fortunate, for when it became apparent that the stringency of regulation envisioned in the proposed bills was impossible of realization, Wilson was able to disclaim responsibility for it and demand sweeping changes in the direction of moderation.<sup>30</sup>

<sup>29</sup> Hearings before Committee on Judiciary, House of Representatives, 63rd Cong., 2nd Sess., December 9, 1913, to April 6, 1914.

<sup>30</sup> See A. A. Young, "The Sherman Act and New Anti-Trust Legislation," *Journal of Political Economy*, XXIII, 201-220; 305-326; 417-436 (1915).

This he did on March 12 and four days later the rumor began to circulate that the bills would be consolidated into a single bill from which some of the most controversial items, *e.g.*, Sherman Act definitions, would be omitted. The rumor turned out to be correct. After a conference between the subcommittee and the President on April 3, a revised and consolidated bill was introduced into the House by Chairman Clayton on April 14.

This bill (H. R. 15657) differed substantially from the provisions appearing in the original bills. It bore evidence that the period between January 22 and April 14 had been one of great activity on the part of the interests affected by the proposed acts. The new bill, omnibus that it was, combined several features previously found in the three separate bills and added important new sections dealing with labor. Nothing about labor had been included in the trust message of January 20, nor had the original bills included any mention of it. Its inclusion at this time reflected a growing realization by the President that some concessions were essential if he were to overcome the concerted opposition of organized business. The first strategy was to consolidate his support by combining into a single measure various items calculated to attract enough different supporters to guarantee its passage. From this angle the labor sections were highly valuable. This was perhaps the greatest single factor in the ultimate passage of the Clayton Act. It is worth noting that the labor exemption amendments were passed in the House without a single dissenting vote, 207 to 0.<sup>31</sup>

31 Labor clauses had been pushed with varying degrees of success since the consideration of the Sherman Act itself. A bill introduced by Senator George in 1889, during debate on the Sherman bill, to exempt labor and agricultural organizations from its anti-trust provisions had been accepted by the Senate for a time. (S. 6, 51st Cong., 1st Sess., December 4, 1889.) An amendment to the Sherman Act, exempting labor from its provisions, had been introduced in the House by Wilson of Pennsylvania in 1908 only to die in committee. A rider to the Sundry Civil Appropriations bill forbidding the use of any of the Department of Justice funds to prosecute anti-trust violations of labor or agricultural organizations resulted in the veto of the entire bill by Taft in 1913. Later the same year a similar bill was signed, albeit reluctantly, by Wilson. Moreover, two bills by Clayton prohibiting the issuance of injunctions in labor disputes and guaranteeing jury trials in labor contempt cases

When H. R. 15657 was reported out by the House Judiciary Committee on the sixth of May, it had undergone many changes.<sup>32</sup> Events of the intervening months had necessitated its complete rewriting not once but several times and in each case the motivating factors had been multiple. Consequently, the bill finally presented for House debate was definitely complex in its parentage.<sup>33</sup> The President's ideas, originally clear cut and unequivocal, had emerged in considerably modified form; personal opinions of the three-man subcommittee had found some expression; labor had succeeded in selling its support, not at the price it would have liked to demand, but at terms guaranteeing definite gains heretofore unattainable.

Debate on the Clayton bill began on May 22, 1914. It passed the House without amendments other than those suggested by the committee, the final vote being 277 to 54, on June 5, 1914.<sup>34</sup>

In the Senate it was immediately referred to the Judiciary Committee. No hearings were held but when the committee submitted its report on the bill on July 22 the bill was hardly

had been passed by the House in 1912. (H. R. 23635 and H. R. 22591, 62nd Cong., 2nd Sess.) Thus the gaining strength of labor is recorded in the proceedings of Congress.

32 H. Report 627, 63rd Cong., 2nd Sess., May 6, 1914.

33 As for the actual process of drafting there seems little doubt that the President had left this entirely up to members of the Judiciary Committee. The following statement of Representative Floyd of Arkansas, made in the course of debate on the bill, may be accepted as evidence to this effect:

"It is true that the Judiciary Committee assigned the work of framing the bill to a subcommittee composed of the chairman [Mr. Clayton], the gentleman from Virginia [Mr. Carlin], and myself. We worked for hours, for days, and for weeks formulating the provisions of this measure when no one else was present, but whenever we formulated a proposition we brought it into the spotlight, laid it not only before the members of the committee but before the country." *Congressional Record*, 63rd Cong., 2nd Sess., p. 9156, May 23, 1914.

34 An editorial in the *New York Times* for June 3, 1914, commented upon the strange spectacle of such unanimity in vote upon such highly controversial measures. It concluded that the members of Congress must be convinced that the temper of the voters was in favor of such regulation.

recognizable.<sup>35</sup> Almost half the bill had been struck out and Senate amendments added. Virtually every change sought to render the bill less offensive to business, hence less effective as a regulatory measure. The labor provisions, however, were not greatly changed. Debate began on the thirteenth of August and continued on fifteen different days through September 2 when by a vote of 46 to 16 it was passed, but not until more emasculatory amendments had been added. Senate debate though able, thorough, and comprehensive, and participated in by some of the best informed persons in the country, was carried on almost before an empty chamber. Numerous quorum calls were requested with the explanation that less than a dozen Senators were present. Unless the absent Senators indulged in more serious study of the *Congressional Record* than is usually the case it must be assumed that they had already made up their minds which way to vote and were not interested in the details pro or con.

In its much amended state, H. R. 15657 went immediately to conference where it was to remain three weeks. Throughout this interval the Democratic conferees were in constant communication with the President. The rumors that the bill was undergoing a toning down process were given credence by the rumblings of Representative Volstead and Senator Nelson, Insurgent members of the conference committee. The conference committee report made it clear that, if anything, advance reports were understatements.<sup>36</sup> Ninety-five amendments were made in conference. The new bill, to the surprise of everyone except the conferees and the President, went considerably beyond the Senate measure in its concessions to the appeasers.<sup>37</sup>

<sup>35</sup> S. Report 698, 63rd Cong., 2nd Sess., July 22, 1914.

<sup>36</sup> H. Report 1168, 63rd Cong., 2nd Sess., October 7, 1914.

<sup>37</sup> The unusually broad latitude assumed by the committee was described by Senator Norris: "The conferees have taken the House bill and the Senate bill, and out of them have drafted a new measure." He termed the new bill a milk and water sort of thing adding that it should be sent back to conference or voted down.

In the eyes of many of the more outspoken advocates of regulation the bill in its new form was more harmful than no law at all because its passage would make more difficult the attainment of effective legislation.

During the debate on the conference report one of the chief questions of interest was the attitude of the President. It was argued by Senator Clapp that it was impossible to believe that the Chief Executive would acquiesce in the craven surrender exhibited in the recent changes, for, he insisted, these changes could not be reconciled with the President's position on trust regulation as stated in his own messages. Upon being assured that Mr. Wilson had not only approved but in all probability had taken part in the task of working out the changes, Senator Clapp shifted his attack and discussed with vigor the proper relationship between the President and Senators, particularly in matters of this kind. He asked whether any man fresh from academic halls, such as Woodrow Wilson was, could hope to know as much about such a subject as trusts as men who have devoted years to it. Thus, he concluded, Senators should refuse to vote against their convictions just because the President might so desire. His closing sentences constitute a familiar but pointed defense of individual conviction:

It is time that American Senators rising to the dignity of ambassadors of great states shall take their responsibility for legislation and take the declaration of no man, whether he be within or without the White House. The danger of this one-man power is that no matter how true, how pure, how ideal a man may be in the White House, it is impossible that he shall know all that is going on, and any influence that can surround the situation can work untold injury to this Republic.<sup>38</sup>

Except for the members of the conference committee no one in the Senate saw fit to defend the bill. The vote of 35 to 24 is indicative, however, not only of the futile character of the debate but of the apathy if not plain indifference with which the

<sup>38</sup> *Congressional Record*, 63rd Cong., 2nd Sess., p. 16056, October 2, 1914.

measure had come to be regarded by the fifth of October. Nor was the situation different in the House where the conference report was debated under a five-hour agreement. Proceedings had to be repeatedly halted for quorum calls, and the final vote showed 245 for, 52 against, 5 answering present, and 126 not voting.

The Clayton Act, initially an integral part of the President's legislative program in fulfillment of the promises of the Democratic party in the 1912 campaign, was the joint product of administrative and legislative efforts. In its original form it constituted a real step in the direction of effective regulation. By a series of changes, motivated by organized business and labor and concurred in by both the President and his party leaders in Congress the bill lost much of its vigor. The responsibility for this seems to rest chiefly with the President for while numerous changes were made by the Senate, the most significant of these were made with the President's concurrence. The willingness of President Wilson to accept a measure so remote from that he had originally envisioned, was strange indeed for a man as little fond of compromise as he.

His apparent retreat was due chiefly to a shift in emphasis in his thinking which had occurred during the months while trust legislation was before Congress. It has already been pointed out that the idea of commission regulation had caught his fancy. This was not a sudden event; it had been accorded some discussion in the many speeches he had devoted to trusts during the past three years. At the time of his trust message to Congress, however, the President had not accepted the idea that the commission should exercise more than investigative and fact-finding powers. It was in accord with this stage of his thinking that the terms of the original trade commission bill, or Covington bill, as it was popularly known, were so limited. Later, Mr. Wilson was persuaded that his objectives could be better realized if the power and authority of the commission were extended.



As he became convinced that a strong commission was the surest weapon to prevent unfair competition and thus to cut off monopoly at its roots, the importance of the exact provisions of the Clayton Act may have seemed to shrink. This shift of attack was not immediately appreciated by those following the turn of events.

Two other factors undoubtedly played some part in his change of attitude. In the first place the summer and early fall of 1914 marked a period of business slump. The industrial indexes were in decline, earnings were down, failures and bankruptcies were conspicuous news items in the daily press. Early attempts by organized business to persuade the President to postpone his trust program because of its adverse effect upon business had met with sharp rebukes from the White House. The President had publicly stigmatized the talk of business depression as a deliberately planned attempt of big business to thwart further legislation by fostering a "psychological depression".<sup>39</sup> The suspicion occurs that this outburst was an attempt at self-reassurance for the columns of the contemporary press carry too many bona fide accounts of business failures to leave any doubt concerning the genuineness of the slump. Whatever its cause its existence was manifest and the President could not help but be influenced. The mid-June suggestion of Majority Leader Underwood that Congress adjourn, leaving the anti-trust bill until fall did not lend the President encouragement.<sup>40</sup> Slowly but surely this must have had its effect. Subsequent experience has illustrated that business slumps, whatever their cause are well nigh irresistible in their deflating effect upon reform. At any rate the record shows a steadily decreasing note of bellicosity in the administration's insistence upon its original program.

Secondly, the growing seriousness of international affairs has already been mentioned. One has only to look through the

<sup>39</sup> The term is interesting because of its use in 1937-38 by another President regarding business recessions.

<sup>40</sup> *New York Times*, June 15, 1914, p. 1.

pages of the *New York Times* from February on, particularly after April, to realize how completely public attention was monopolized by affairs other than domestic. It is difficult to believe that Wilson's failure to insist upon a more decisive bill would have occurred had his attention not been distracted first by the Mexican incident and then by the outbreak of war in Europe. His genuine interest in trust control, his desire to fulfill his campaign promises, his innate unwillingness to be deflected from an announced objective, all these combined to prevent him from relinquishing his projected reform. But he had neither the time nor the energy necessary to drive through an uninterested and reluctant Congress the kind of bill he first envisioned. Consequently he had to content himself with form rather than substance and as such the Clayton Act became law.

### THE NATIONAL INDUSTRIAL RECOVERY ACT 1933

The National Industrial Recovery Act did not originate in Congress, but congressional action contributed largely to its initiation and promotion by the administration. The approval of the Black thirty hour week bill by the Senate on April 6, 1933, in effect, forced the President's hand on a measure which he had not seriously considered prior to that time.

The action of the Senate made it clear that the congressional mood was one of action. If President Roosevelt hoped to retain his leadership he had to act quickly, otherwise he might find himself in the uncomfortable position of seeking to lead a body which in its thinking had already gone far beyond him. The National Industrial Recovery Act was the result of this necessity for dramatic action. Far from being the culmination of a long period of planning, discussion, and study, it savored more of a counter attack, hastily devised, and subject to all the imperfections that any makeshift measure is likely to have.

Contrary to the reports circulated during its declining months the National Industrial Recovery Act had a most respectable heritage. Its pedigree can be traced directly to such eminent figures as Gerard Swope, H. I. Harriman, Bernard

Baruch, Lewis Douglas, and others of similar standing. During the fall of 1931 there occurred a typical example of congressional sensitivity to contemporary currents of opinion when a subcommittee of the Senate Committee on Manufactures, under the chairmanship of Senator LaFollette, held extensive hearings on the establishment of a national economic council.<sup>41</sup> During the course of these hearings, Swope and Harriman, as well as many other prominent figures in business, labor and professional circles, appeared and gave their opinions on various recovery proposals. Many different plans were discussed but attention centered upon the Swope plan and that suggested by the Committee on Continuity of Business and Employment of the Chamber of Commerce of the United States. Although differing in details both these plans emphasized the value of trade associations as stabilizing factors in business if they could be freed from the restraints of the Sherman Act.

The President was familiar with this point of view. He had discussed the possibilities of some form of governmental intervention as early as 1932 with his advisers, and also with various industrialists including Swope and Harriman.<sup>42</sup> But there had been no deliberate or systematic study made of the problem, and it was not thought of as one of the necessary measures of the special session.<sup>43</sup> Indeed, the objectives of the special session, as originally conceived, were much less ambitious than its achievements turned out to be. When it suddenly became apparent that some recommendation in respect of business regulation must be made by the administration, if it was to retain its newly won prestige, it was not possible to draw upon the results of carefully prepared data bearing upon this

<sup>41</sup> Hearings before a subcommittee of the Senate Committee on Manufactures, 72nd Cong., 1st Sess., on S. 6127 (71st Cong.), October 22-November 4, 1931, 465 pages.

<sup>42</sup> Ernest Lindley, *The Roosevelt Revolution* (New York, Viking Press, 1933), p. 151.

<sup>43</sup> Raymond Moley, *After Seven Years* (New York, Harper and Brothers, 1939), p. 187.

complicated problem. This was the situation existing in early April when the President decided to request action from Congress.

President Roosevelt first appointed a cabinet committee headed by Secretary Perkins to draft an industrial recovery measure, but this bill went too far in its disregard of precedent, so it was hastily discarded and a different tack taken.<sup>44</sup> Upon his request, either directly or indirectly through some of his advisers, a number of persons set about the task of drafting a measure to regulate business. All of these labors were pursued independently; the authors of the different plans were quite unaware that theirs was but one of several on which work was being done. Hugh Johnson, working at Moley's suggestion, sought to draw upon his World War experience as well as upon the mass of material of more recent origin that he had collected in collaboration with B. M. Baruch.<sup>45</sup> At the request of the President, John Dickinson worked in collaboration with Senator Wagner who had already introduced a bill creating a system of public works.<sup>46</sup> Donald Richberg, a labor lawyer, had undertaken another draft.<sup>47</sup> Others, including Rexford Tugwell, Jerome Frank, and Lewis Douglas, all had become involved in one way or another.

Confronted with reams of ideas but with no plan, and unwilling under the circumstances to make a decision himself, Mr. Roosevelt called those who had worked upon the various proposals together and tried to distill from the assembled mass of ideas something both plausible and workable.<sup>48</sup> When this proved impossible, he requested those present to get together to work out their differences, and to bring him a bill that he

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*, p. 188.

<sup>47</sup> *Ibid.*

<sup>48</sup> *Ibid.*, p. 189.

could send to Congress.<sup>49</sup> The bill which was finally presented to the President was a product of the efforts of Wagner, Johnson, and Richberg, although Douglas and Tugwell were both in attendance, as well as others who drifted in and out during the obstetrical process.<sup>50</sup> Thus the authors of the bill were many, and the points of view incorporated were not always consistent, sometimes even antagonistic, but the President's mandate to bring forth a bill was obeyed.

The bill as approved by the President and introduced in both houses was a multiple plan embracing two quite distinct programs. Title I dealing with industrial regulation included the plan of industrial codes which came to be known as the National Recovery Act. Titles II and III dealt chiefly with a public works program to be financed by the federal government.<sup>51</sup> Although there was a logical relationship between the two parts of the bill, they were quite separate and could just as well—better, as subsequent events were to prove—have been considered separately. What the strategy of lumping them into one bill might have been is hard to say. Perhaps the desire to secure

<sup>49</sup> *Ibid.*

<sup>50</sup> *Ibid.*; also Hugh S. Johnson, *From Egg to Earth* (New York, Doubleday, Doran and Company, 1933), p. 204; also *New York Times*, May 4, 1933, p. 1.

<sup>51</sup> Neither of these proposals was entirely new. Experience of the Federal Trade Commission with the device of trade practice submittals during the 1920's had not been wholly satisfactory but the advantages of "cooperative" relationships between government and business had been partially demonstrated. (See, for example, Clark, *op. cit.*, pp. 226-234.) Advocacy of a public works program as a pump-priming device for stabilizing economic conditions had occurred shortly after the first World War. The Kenyon bills of 1919 and 1921, which received considerable discussion at the time, are representative of this trend of thought. Later, in 1931, in the face of administration indifference, if not opposition, Congress passed the Federal Employment Stabilization Act to ease unemployment through a federally financed program of public works. It is worth noting that this important step in compensatory public spending originated in Congress rather than with the Executive. See Hearings before the Senate Committee on Education and Labor on S. 5397, 66th Cong., 2d Sess., February 7, 1919, and on S. 2749, 67th Cong., 2d Sess., December 21, 22, 1921.

the adjournment of Congress at the earliest moment possible was controlling. Certainly, the tying up of the industrial measure with a three billion dollar public works program was good insurance that there would be sufficient lubrication to smooth out any possible frictions that might otherwise have caused delay.<sup>52</sup> The conviction can not be escaped that the members of both houses—in committee as well as on the floor—exhibited greater interest in Title II than in the revolutionary Title I. Had they been introduced as separate bills there is reason to believe that Title I would have received more systematic scrutiny.

When President Roosevelt sent his special message accompanying the industrial recovery bill to Congress on May 17, 1933, he pointed out that it called for additional revenue, amounting to \$220,000,000 annually, to amortize the bond issue of \$3,300,000,000 from which the public works program was to be financed.<sup>53</sup> In contrast with the exceedingly concrete proposals embodied in the rest of the bill, the provisions for raising the necessary funds were missing—the draft bill carrying the cryptic phrase, "Taxation provisions to be inserted later as section 208."<sup>54</sup>

<sup>52</sup> Possibly not to be considered as unimpeachable evidence but worthy of notice as straws in the wind indicating the heterogeneous character of the Democratic majority was the momentary flare-up in the House by those who opposed relaxation of the anti-trust laws.

As rumor got out that an administration bill was being prepared and that it contained provisions suspending the anti-trust laws, an incipient revolt threatened when forty-nine Democratic members of the House, led by Shannon of Missouri and Patman of Texas, signed a petition demanding a caucus on the anti-trust issue. The revolt came to naught; only 150 of the 317 Democrats in the House attended, and two resolutions opposing revision of the anti-trust laws were withdrawn without being voted upon. All manifestations of recalcitrance apparently evaporated when a motion by Majority Leader Byrns expressing complete confidence in the administration carried unanimously. Nevertheless, the incident had symptomatic value to an administration highly sensitive to the appearance of political static. (The account of the details surrounding this incident and its dissipation is to be found in the *New York Times*, May 10, 1933, p. 2, and May 11, 1933, p. 3.)

<sup>53</sup> *New York Times*, May 18, 1933, p. 18.

<sup>54</sup> *Ibid.*

In explanation of this omission concerning taxes the President said in his accompanying message:

I do not make a specific recommendation at this time, but I hope that the Committee on Ways and Means of the House of Representatives will make a careful study of revenue plans and be prepared by the beginning of the coming week to propose the taxes which they judge will be best adapted to meet the present need and which will at the same time be least burdensome to our people. At the end of that time, if no decision has been reached or if the means proposed do not seem to be sufficiently adequate or certain, it is my intention to submit to the Congress my own recommendations in the matter.<sup>55</sup>

This omission may have been sound strategy. Superficially there was a certain logic in it. The reference to the House of Representatives and its specific organ, the Ways and Means Committee, as the proper place for the initiation of revenue measures was consonant with good American tradition. It might even be regarded as a symbol of the administration's good faith in wishing to preserve the traditional balance between the two branches. Actually, there was no greater reason for withholding specific recommendations in the matter of taxes than in any other field. Indeed, since the Budget and Accounting Act of 1921 there is a direct obligation upon the Chief Executive to make specific tax proposals for congressional consideration.

The failure or refusal to present a completed bill was immediately challenged by some Republicans as a pretty bit of buck-passing. Representative Treadway of Massachusetts criticized the President for taking the popular end of the bill—the public works program—and leaving to Congress the unpopular part of raising the taxes. He went on to observe that this was the first time during the session that the President had left anything to Congress to determine.<sup>56</sup>

<sup>55</sup> *Ibid.*

<sup>56</sup> *Congressional Record*, 73rd Cong., 1st Sess., p. 4329, May 26, 1933.

The national industrial recovery bill in this incomplete form was introduced in both houses on May 17.<sup>57</sup> The House Ways and Means Committee under the chairmanship of Representative Doughton of North Carolina proceeded to hold public hearings on the bill.<sup>58</sup> These hearings ran through the three days May 18, 19, 20.<sup>59</sup> Oral testimony was received from forty-three persons and communications were received from five others. Representatives from eighteen trade associations presented arguments. In addition, officers of such nation-wide organizations as the National Grange, American Farm Bureau Federation, Chamber of Commerce of the United States, and American Federation of Labor were heard. Mere numbers are misleading, however, because six witnesses—Douglas, Richberg, and Senator Wagner, all of whom might be said to

<sup>57</sup> H. R. 5664 and S. 1712, 73rd Cong., 1st Sess.

<sup>58</sup> Hearings before Committee on Ways and Means, House of Representatives, on H. R. 5664, 73rd Cong., 1st Sess., May 18, 19, 20, 1933.

<sup>59</sup> It has already been suggested that the joining together of the regulatory Title I and the financial Title II had been unfortunate from the standpoint of attaining high quality legislation. Another aspect of this same difficulty is apparent in the committee stage both in House and Senate. Because of the tax provisions, H. R. 5664, the industrial recovery bill, was referred to the Ways and Means Committee. The entire orientation of this committee is financial, particularly revenue. It is unfortunate but not surprising that the chief preoccupation of the veteran members of both parties should rest upon the revenue provisions. Mr. Doughton and Mr. Treadway with twenty years' experience in this subject, and no less than nine others with service ranging from ten to twenty years, can be pardoned if the financial phases of any governmental problem claim the lion's share of their deliberations. A comment of Mr. Treadway's during Douglas' testimony is revealing, "Mr. Chairman, there is just one other matter that I would like to bring up. The four suggestions (for raising revenue) that the Director has laid before us, from the viewpoint of some of us, are the real pith of the bill before us." *Hearings*, p. 38.

Had this part of the bill been separated from the regulatory part (Title I) the latter would have been referred to the Judiciary Committee where it might have received a much more searching examination.

In the Senate, the bill was referred to the Finance Committee for similar reasons. Here also the interest was chiefly financial, although the committee membership seemed less narrow in its interest than had been true in the House committee.



represent the administration; Green and Harriman, speaking for their respective organizations; and Professor Irving Fisher, who appeared in support of a token currency plan—consumed more than half the total time and contributed more than half the testimony. Most of the remaining witnesses were restricted to five minutes each, although a few were granted permission to incorporate additional material into the record.

Secretary Woodin appeared just long enough to present Budget Director Lewis W. Douglas who spoke as one who had participated in the formulation of the bill. Mr. Douglas was the single most important witness to appear before the committee. His statement and cross-examination filled sixty-five pages. Except for a very general statement regarding the objectives of Title I, he devoted himself to the problems involved in the public works and taxation sections of Title II. He suggested four possible alternative plans for raising the additional \$220,000,000 called for in the bill. When asked by Representative Treadway if he would express a preference among the four suggestions, he declined but added, "I will be very glad at some later time, if the committee desires me to do so, to make a very specific suggestion."<sup>60</sup>

Mr. Douglas was followed by Donald Richberg, one of the men who participated in the drafting of the bill. Mr. Richberg emphasized the fact that he was not appearing as an administration spokesman; his opinions were to be regarded as representing no point of view except his own personal one.<sup>61</sup> He confined his remarks entirely to Title I. His testimony covered twenty-two pages. It, together with the testimony furnished by Senator Wagner, William Green, and H. I. Harriman, provides the only serious discussion of the industrial regulation features

<sup>60</sup> *Hearings*, p. 39. Mr. Treadway pointedly remarked during the subsequent debate in the House that Mr. Douglas had not, to the best of his knowledge, made any such specific recommendation. *Congressional Record*, 73rd Cong., 1st Sess., p. 4329, May 26, 1933.

<sup>61</sup> *Ibid.*, p. 84. Nevertheless, in view of his intimate connection with the drafting of the bill, his opinions at this time must be regarded as fairly representative of those held by the administration.

of the bill. All of these individuals supported and endorsed the bill although Mr. Green suggested two amendments, conditioning his approval in the following language: "If the industrial recovery act is amended, as herein suggested, labor will extend to this proposed legislation its full and hearty endorsement."<sup>62</sup> The two amendments appear in the final act.

The testimony of these four key witnesses bearing on Title I constituted a total of less than sixty pages. Yet that is the substance and essence of the attention paid to the regulative features of the bill. Almost without exception the other thirty-odd witnesses confined themselves to some specific phase of the taxation or public works features in the bill.

Thus the Ways and Means Committee formulated its judgment after three days of hearings of which something less than one quarter was devoted to Title I. Taking into account the amount of time which the highly important task of formulating the complicated tax provisions of the bill must have consumed, the impression is inescapable that the bill as a whole could not have received the careful study frequently referred to in the subsequent debates.<sup>63</sup>

In all, the House devoted eight hours and twenty minutes on May 25, and 26, to consideration of H. R. 5755, the amended recovery measure reported by the Ways and Means Committee. This debate was participated in by twenty-six Democrats and twenty-nine Republicans. Only two speeches, one by J. M. Beck (Republican) of Pennsylvania, and one by Eugene Cox (Democrat) of Georgia, both of which were in opposition to the measure, were more than twenty minutes in length. The great majority spoke for ten minutes or less; many were granted

<sup>62</sup> *Ibid.*, p. 118.

<sup>63</sup> This feeling is borne out by the admission of one of the senior members during the course of the second day's debate:

Mr. Cox. The gentleman states that the only section of the bill that his committee considered was the tax section.

Mr. Frear. Yes; so far as having any voice in its determination. *Congressional Record*, *op. cit.*, p. 4295, May 26, 1933.

This statement was not challenged by any other member of the Committee.

four, three, or even two minutes. At the conclusion of the House debate the Ways and Means Committee offered eleven amendments which were quickly accepted. Of the eleven, five were of a perfecting nature, two were concerned with tax matters, and the remaining four dealt with public works; none applied to Title I. A motion by Representative McCormack to recommit and substitute a two and one half per cent manufacturers' excise tax for the existing tax provisions was defeated and the bill passed by a vote of 325 to 76 on May 26, 1933.

Mr. Blanton's statement at the end of the debate probably epitomized the sentiment of the great majority of those who voted for the bill: "This bill is the President's bill. He has had it prepared consistent with his own ideas. He says that it is a vital part of his program. . . . So I am going to vote for this bill. For I am backing the President." <sup>64</sup>

The Senate Finance Committee met briefly on May 22, heard from Senator Wagner and Donald Richberg, then recessed until May 26. Subsequent hearings were held on May 29, 31, and June 1. <sup>65</sup> Although seventy-three witnesses gave testimony

<sup>64</sup> Several points emerge concerning the behavior of the House of Representatives in relation to the recovery bill. In the first place the element of time is of interest. Just ten days elapsed between the President's message to Congress and the passage of the bill by the House. The handling of the bill by the Ways and Means Committee during the three days of hearings had much to do with the preponderant emphasis placed upon the financial aspects of a bill that was truly revolutionary in its regulative provisions.

The bill as reported out of committee on May 25 was not notably different (except for the addition of five pages of revenue provisions to Title II) from the President's original bill. House debate took place under the strictest of gag rules, amid exhortations from the leadership that the thing to do was to keep quiet and vote yes when the time came. Loyalty to the President was made the issue, the impression being broadcast that he had requested acceptance of the measure without amendment or qualification. At the same time the committee made it clear that they had labored over the bill and that it was the result of their best judgment, although it never became quite clear whether they were talking about the entire bill or referring only to the tax provisions of Title II. This confusion was never completely removed; it is a fair assumption that the great majority of those voting for the bill were not sure as to just what the Ways and Means Committee had done.

<sup>65</sup> Hearings before Committee on Finance, Senate, on S. 1712 and H. R. 5755, 73rd Cong., 1st Sess., May 22, 26, 29, 31, and June 1, 1933.

totaling 439 pages, the results are disappointing. Roughly half the testimony set forth in the record is concerned with the prospective amendment establishing regulation of the oil industry.<sup>66</sup> Dozens of witnesses appeared to present arguments on either side of this issue, but the enforced brevity of their remarks precluded satisfying results to either the committee or the witnesses. The extremely summary character of the hearings as a whole is striking. Representatives of the oil industry coming from as far away as Texas, Oklahoma, and California to testify were restricted to ten or fifteen minutes before the committee.

As in the hearings before the Ways and Means Committee surprisingly little interest was manifested in Title I, except for the oil amendment. Actually less than fifteen per cent of the testimony bore directly on trade regulation, much of that being of a scattered and fugitive character frequently amounting to five minute snatches of argument embracing two or three pages of material. Donald Richberg devoted something less than half an hour to Title I, Senator Wagner about the same amount, and James Eméry, representing the National Association of Manufacturers, not quite one hour.

The bill as amended was reported out by the Senate Finance Committee on June 5,<sup>67</sup> but upon the request of Minority Leader McNary consideration was postponed until June 7 on which day general debate began, to continue until the final vote on June 9. In reporting the bill, Senator Harrison yielded to Senator Wagner who, although not a member of the Finance Committee, carried the burden of defending it. He gave a very full discussion of Title I, treating carefully the whole problem of its

<sup>66</sup> Secretary Ickes had sought unsuccessfully to persuade the Ways and Means Committee to incorporate this amendment regulating the production of petroleum. The committee had refused because it had received no go-ahead signal from the White House. In the confusion attendant upon the extremely hurried hearings presidential clearance did not materialize until after the bill had passed the House.

<sup>67</sup> S. Report 114, 73rd Cong., 1st Sess., June 5, 1933.

relationship to existing anti-trust laws.<sup>68</sup> Title II also came in for detailed though less comprehensive analysis.

Senator Borah discussed at some length the constitutional features as well as the question of the advisability of removing the anti-trust provisions then in force. Senator Huey P. Long delivered one of the most outspoken attacks against the measure, the chief burden of his argument being that the bill involved an abdication by Congress of its constitutional prerogative to make laws. Other sharp attacks on Title I came from Senator Reed and Senator Clark.

After a long and extensive, if somewhat rambling debate on Title II, and the defeat by a vote of 49 to 31 of a motion by Senator Clark to strike out Title I in its entirety, the bill with some one hundred amendments, most of which were of a minor nature, was passed 58 to 24 on June 9, 1933. It was immediately sent to conference. The conference report was adopted by the House on June 10 and by the Senate on June 13.

Notwithstanding the multitude of Senate amendments to the bill, Title I did not emerge fundamentally different (except for the section on oil regulation) from the bill which accompanied the President's message. Two proposed labor amendments have already been mentioned as having been accepted. A long rather complicated sub-section was added to Section 3; this empowered the President to restrict the entry of foreign goods to prevent them from competing unfairly with domestic goods. This amendment is further illustration of the preoccupation of the finance committees of both houses with those phases of the bill dealing with tariffs and taxes.

With respect to Title II the story is different. The tax provisions were entirely the handiwork of Congress, both House and Senate making substantial contributions. Extensive and important modifications were also made in the public works provisions, generally in the direction of expanding and elaborating the program envisaged by the administration. A comparison of the original and completed bills shows bountiful evidence of

<sup>68</sup> *Congressional Record*, 73rd Cong., 1st Sess., pp. 5151-5157, June 7, 1933.

congressional activity, the lion's share of which occurred in the Senate.

Thus analysis bears out the popular impression that the National Industrial Recovery Act was the product of the administration rather than of Congress.<sup>69</sup> This must be the verdict in spite of the considerable and important changes that were actually made. Indeed the very presence of any changes magnifies the failure of Congress to discharge its responsibility. Had the President's bill been passed without modification Congress might have justified its action on the basis of the perfection of the original document or because of a critical situation demanding instantaneous action, though by this time the acute crisis of the previous March had lessened. But these arguments could not legitimately be used. A month elapsed between the introduction and final passage of the measure. Ample time was available for study. Failure on the part of the committees to exercise sufficient concern over the regulatory Title I has already been attributed at least partially to the traditional orientation of their members, particularly the senior members to whom leadership falls.

The casual nature of administrative leadership, the extremely chimerical character of its sense of responsibility, and the astigmatic absorption of congressional committees with the financial side of government can be set down as the chief characteristics of the legislative history of the National Industrial Recovery Act.

### THE SECURITIES ACT OF 1933

The President's message of March 29, 1933, recommended immediate enactment of the bill that was eventually to become the Securities Act of 1933. Congress had long been interested in security regulation. In 1912 in pursuance of a resolution, a

<sup>69</sup> It has already been pointed out, however, that the hearings of the LaFollette subcommittee had furnished the first official forum for the discussion of business self-regulation under governmental supervision.

subcommittee of the House Committee on Banking and Currency began an investigation of the so-called money trust.<sup>70</sup> Popularly known as the Pujo Committee, this committee held hearings throughout much of 1912 and 1913. It amassed an enormous amount of material: some three thousand pages of oral testimony, nine hundred pages of statistical material, and a final report which ran to two hundred twenty-five pages.<sup>71</sup> In this report, submitted February 28, 1913, the committee recommended state incorporation and regulation of stock exchanges and offered a bill denying the use of the mails and telegraph to those who failed to comply. This bill, in effect a regulation of both securities and exchanges, received no further action.

Early in the second session of the 63rd Congress, Senator Owen, Chairman of the Senate Banking and Currency Committee, introduced a bill to prevent the use of the mails and of the telephone and the telegraph in furtherance of fraudulent and harmful transactions on stock exchanges.<sup>72</sup> The Senate Banking and Currency Committee held hearings on this bill from February 4 through March 4, 1914. The Owen bill was reported out on June 25, 1914,<sup>73</sup> but due to the hostility of some of the members of the Banking Committee and the absence of Senator Owen, it was ordered recommitted two days later and never saw the light of day again. This same session witnessed the introduction of four bills in the House, all attempting to regulate securities or exchanges through the use of postal power. None advanced beyond the introduction stage. During the next five years every session saw one or more such bills introduced, but no action was taken and the subject did not excite great attention. In the third session of the 65th Congress, Mr. Taylor of Colorado broke new ground by introducing a bill requiring publicity for all prospectuses of corporations desiring to sell

70 House Resolutions 429 and 504, 62nd Cong., 2nd Sess.

71 H. Report 1593, 62nd Cong., 3rd Sess., February 28, 1913.

72 S. 3895, 63rd Cong., 2nd Sess.

73 S. Report 618, 63rd Cong., 2nd Sess., June 25, 1914.

new securities to the investing public.<sup>74</sup> This bill died in committee, but Mr. Taylor reintroduced the bill in the new Congress which convened in December, 1919, and this time succeeded in obtaining hearings by the House Judiciary Committee to which the bill had been referred.<sup>75</sup> The bill met violent opposition from the investment bankers; it was never reported out of committee. The second session of the 66th Congress brought forth the Volstead bill.<sup>76</sup> It embodied the principle already found in the laws of New York, New Jersey, and Maryland. The Attorney-General was empowered to investigate alleged fraudulent sales of securities and issue stop orders against further sales where the evidence seemed to justify. Similar laws had not proved effective when used by the states, but the Volstead bill received the support of the Investment Bankers Association. Referred to the Judiciary Committee, H. R. 12603 died there.

Next came the Denison bill which again proposed new methods of treating the securities problem.<sup>77</sup> This bill provided that the sale of securities in any state in violation of its blue sky laws would be a federal offense. To this end the use of the mails or agencies of interstate commerce was barred to all such securities. The bill was referred to the House Committee on Interstate and Foreign Commerce which proceeded to hold hearings. Hearty support by blue sky officials in thirty-eight states aided its progress. It was favorably reported by the House Committee,<sup>78</sup> and passed by the House almost unanimously, but it was never acted upon by the Senate Judiciary Committee to which it was referred.

<sup>74</sup> H. R. 15447, 65th Cong., 3rd Sess. This bill was prepared upon the joint recommendation of the Federal Trade Commission and the Capital Issues Committee. Huston Thompson, then a member of the Federal Trade Commission, aided in drafting the bill.

<sup>75</sup> H. R. 188, 66th Cong., 1st Sess.

<sup>76</sup> H. R. 12603, 66th Cong., 2nd Sess.

<sup>77</sup> H. R. 760, 67th Cong., 2nd Sess.

<sup>78</sup> H. R. 760, 67th Cong., 2nd Sess.



Between this concentration of congressional attention on securities and securities exchanges in the period covering the 66th and 67th Congresses, and its revival in the 73rd Congress following President Roosevelt's message, there was a lull in attempts to enact regulatory legislation, but activity did not cease. During this period of a dozen years scarcely a session passed without some legislation being offered. Twenty-six securities or stock exchange bills were introduced in the House, eleven in the Senate. Moreover, ten resolutions were introduced calling for congressional investigation of various phases of the securities field. The volume of new bills suddenly increased in the 72nd Congress, immediately following the stock market crash in 1929. A subcommittee of the House Judiciary Committee held hearings on four of these bills, but made no report.<sup>79</sup>

The presidential message of March 29, 1933, calling for securities legislation had been preceded by several weeks of study. According to Raymond Moley's account, the beginnings of presidential activity came in December, 1932, when Moley with Roosevelt's approval requested Samuel Untermyer to help in the preparation of a bill for regulating securities and stock exchanges.<sup>80</sup> Unknown to Moley, Attorney-General Cummings and Secretary of Commerce Roper were also directed by Mr. Roosevelt to prepare a bill. They engaged Huston Thompson, ex-chairman of the Federal Trade Commission, as research expert. Some misunderstandings resulted during which Samuel Untermyer withdrew from the proceedings; the President accepted the Thompson bill and sent it to Congress along with his message of March 29, 1933. It was introduced in the House by Rayburn and referred to the Interstate Commerce Committee; in the Senate the bill was sponsored by Ashurst and referred to the Judiciary Committee, but the reference was later changed

<sup>79</sup> H. R. 4 (LaGuardia); H. R. 4604 (Kelly); H. R. 4638 (Sabath); and H. R. 4639 (Sabath). Hearings before a subcommittee of House Judiciary Committee, 72nd Cong., 1st Sess., February 15, 17, 19, 24, and March 4, 5, 1932. 235 pages.

<sup>80</sup> Moley, *op. cit.*, p. 176.

to the Banking and Currency Committee.<sup>81</sup> The Thompson bill used as its model the Denison bill, which sought to give effect to state blue sky laws by denying the use of the mails or the channels of interstate commerce to transactions where such state laws were not observed. Both committees held hearings on the bill.<sup>82</sup> The witnesses fell into two well-defined groups: representatives of the administration who were unanimous in their support of the bill, and emissaries from the investment banking world who invariably endorsed the idea of regulation but without exception recorded their opposition to this particular bill. Their general theme was that they wanted a perfect bill and this one failed to meet their standards. The testimony was not illuminating. Members of the committees in both houses found themselves at a disadvantage in discussing investment and securities problems with the Wall Street fraternity who frequently sought to clothe their opposition to federal regulation in such technical language that there was simply no meeting of the minds and consequently no basis for formulating intelligent policy.

After making some changes which did not alter the fundamental character of the original bill the Senate committee reported the Thompson bill favorably.<sup>83</sup> The House committee, however, discarded the bill, and, at Rayburn's request, an entirely new bill was drafted by James Landis, and Benjamin Cohen, in collaboration with Felix Frankfurter to whom Moley had turned when consulted by Rayburn.<sup>84</sup> This new bill, patterned on the model of the British Companies Act, sought to accomplish its purposes through requiring publicity of proposed security issues. In this respect it was a logical descendant of the

81 H. R. 4314 and S. 875, 73rd Cong., 1st Sess.

82 Hearings before Committee on Interstate and Foreign Commerce, House of Representatives, 73rd Cong., 1st Sess. on H. R. 4314—Federal Securities Act, March 31st, April 1, 4, 5, 1933. 248 pages. Hearings before Committee on Banking and Currency, Senate, 73rd Cong., 1st Sess. on S. 375—Federal Securities Act, March 31 April 8, 1933. 349 pages.

83 S. Report 47, 73rd Cong., 1st Sess., April 27, 1933.

84 H. R. 5480, 73rd Cong., 1st Sess.

Taylor bill of 1919. The new bill was subjected to extensive rewriting in the committee before it was reported out by Mr. Rayburn on May 4, 1933.<sup>85</sup>

In reporting the bill Chairman Rayburn took especial pains to emphasize the care with which it had been worked out by the committee which he said was "virtually unanimous" in its approval. He mentioned Thompson, Judge Healy of the Federal Trade Commission, Butler and Miller of the Department of Commerce, Frankfurter, Landis, and Cohen, as well as Beaman and Perley, Legislative Counsel, as having aided in the drafting of the bill. Explaining that the past week had been one of almost unbroken labor on the bill and that he was utterly exhausted, Mr. Rayburn asked the indulgence of the House for reading his speech. This, an analysis and defense of the bill, was quite apparently not of his own authorship. Mr. Rayburn said: "With this bill we are embarking upon a practically new and untried sea; and, as I say, since I have been a Member of Congress, this is the most technical matter with which I have ever been called upon to deal."<sup>86</sup> Thus an able and veteran congressman implicitly recognized that the layman theory of legislation is open to qualification.

In the five hours allowed for general debate, the House made its only contribution. This discussion was on a high level. Several members addressed their remarks to the soundness of policy underlying the bill. Some informing analyses of the constitutional aspects of federal security regulation were presented, among which the remarks of James M. Beck were outstanding. Had the members of the House wished to obtain evidence upon which a judgment could be based, the debate would have been rewarding. The bill had been reported under a closed rule

<sup>85</sup> House Report 85, 73rd Cong., 1st Sess., May 4, 1933. For a statement by Middleton Beaman, House Legislative Counsel, on the drafting of the bill, see Hearings before the Joint Committee on the Organization of Congress, 79th Cong., 1st Sess., pursuant to H. Con. Res. 18, part 2, p. 422, April 30, 1945.

<sup>86</sup> *Congressional Record*, 73rd Cong., 1st Sess., p. 2916, May 4, 1933.

shutting off all amendments except those offered by the committee. Such a stringent rule though sharply attacked was probably justifiable; certainly it was a reasonable safeguard under the circumstances. Neither the rank and file nor the committee leaders were sufficiently well versed in the technical aspects of the security business to know the probable effects of this or that proposed amendment. The only safe procedure for Rayburn and his lieutenants was to oppose all suggested changes. The House as a whole, aware that it was engaged in something about which it knew nothing, seemed content to take its cue from its acknowledged leaders. The bill passed the House May 5, 1933, without a record vote.

The Senate's consideration of its securities bill was a sham. In presenting the bill Senator Fletcher gave only the briefest of explanations of the scope and nature of its provisions. After scarcely more than an hour's debate the Senate approved the bill. No one discussed its principle; no one paid any attention to its constitutionality. Such apathy, not ordinarily so marked in the Senate, may have been due to the highly esoteric character of the measure. A few questions as to the coverage or scope of the bill were asked by Senators who were frank to say they had not read it. Several amendments were added including a long one by Johnson of California, protecting the investors of foreign bonds, and several dealing with matters of minor detail. These frequently betrayed the preoccupation of their authors with some special phase of the bill. An example was the amendment proposed by Senator Shipstead exempting farmers' cooperatives from the provisions of the bill. Nothing can more clearly illustrate the superficial nature of the Senate's deliberations in this particular instance than the incident accompanying its final action. After the Senate bill had been amended, Senator Fletcher moved that the Senate substitute the House bill (H. R. 5480) for its own bill (S. 875), striking out all except the enacting clause and inserting the provisions of the bill just approved, thus sending both bills to the conference committee with a mandate to report back a single bill. When asked to point out

the chief differences between the two, Senator Fletcher said that this would be difficult; that it had already been covered in the general debate. He very sketchily indicated a few differences and emphasized that the purposes of the two bills were the same and that they would accomplish the same object. With this vague assurance, clearly indicative either of lack of information or of unwillingness to be frank with his colleagues, the Senate seemed satisfied for they agreed to his motion without a record vote. This, in spite of the fact that the two bills were absolutely unlike in their approach to the security problem.

The conference committee virtually accepted the House bill so that the Securities Act as eventually passed rejected the Thompson plan in favor of the Landis-Cohen plan. Yet when the conference report arrived in the Senate, it was adopted without any explanation, debate, or record vote. Not even so much as an oral statement was offered by the Senate conferees.<sup>87</sup> In the House the new bill was accompanied by a fairly elaborate report.<sup>88</sup> Furthermore, Mr. Rayburn in requesting agreement to the report made a brief statement highlighting the work of the conference. The House agreed to the report without debate and without record vote.

#### THE SECURITIES EXCHANGE ACT OF 1934

The general developments leading toward the regulation of securities exchanges between 1912 and 1933 have already been mentioned. The stock market crash of 1929 suddenly focused public attention on an institution that had enjoyed twenty years of comparative freedom from governmental interference. There had been some state regulation, to be sure, but the freedom of the stock exchanges to do as they pleased had not been seriously restricted. Amidst a flurry of bills and resolutions which blanketed the field of securities and speculation, the Senate, on May 2, 1932, passed a resolution by Senator Townsend of Delaware calling for a comprehensive investigation of stock exchanges

<sup>87</sup> *Congressional Record*, 73rd Cong., 1st Sess., p. 4009, May 22, 1933.

<sup>88</sup> H. Report 152, 73rd Cong., 1st Sess., May 22, 1933.

by the Senate Banking and Currency Committee.<sup>89</sup> This resolution was supplemented on April 4, 1933, by a second one extending the powers of the committee,<sup>90</sup> and the following session a third resolution further extended the investigation.<sup>91</sup> In all, the Senate Banking Committee, with Ferdinand Pecora as expert counsel, sat from May 23, 1933, to May 3, 1934. Much of this time was devoted to excursions into the activities of large investment banking institutions, however, and did not bear directly upon stock exchange regulation.

President Roosevelt's stock exchange message, on February 9, 1934, thus found the Senate Banking Committee already in possession of a huge fund of evidence dealing with the subject of his recommendations. Identical bills (S. 2693 and H. R. 7852) were introduced by Senator Fletcher and Representative Rayburn. These bills, though familiar to a number of people including representatives of the Treasury and the Federal Reserve Board, were primarily the handiwork of Messrs. Landis, Cohen, and Corcoran, who had collaborated so effectively the previous year in drawing up the securities bill.<sup>92</sup> Using the Fletcher bill as a basis, the Senate Banking Committee devoted the time between February 26 and April 3, 1934, to hearings on the proposed National Securities Exchange Act of 1934.<sup>93</sup> Of the grand total of 8267 pages of evidence amassed, 1281 pages were confined to testimony bearing on this specific bill in its original and revised forms.

The tedious labors of the committee were not very productive. When the discussion turned to stock exchange practices, involving such highly technical problems as margin requirements,

<sup>89</sup> S. Resolution 84, 72nd Cong., 2nd Sess.

<sup>90</sup> S. Resolution 56, 73rd Cong., 1st Sess.

<sup>91</sup> S. Resolution 97, 73rd Cong., 2nd Sess.

<sup>92</sup> See testimony of Thomas Corcoran before Senate Banking Committee, February 27, 1934, p. 6465.

<sup>93</sup> Hearings before the Senate Committee on Banking and Currency, 73rd Cong., 1st Sess., on S. Resolution 84 (72nd Cong.) and S. Resolution 56 and S. Resolution 97 (73rd Cong.) May 22, 1933-May 4, 1934. 8267 pages.

trading agreements, etc., it quickly got beyond the range of the average committee member. Mr. Corcoran's analysis of the proposed regulations was frequently challenged by Mr. Roland L. Redmond, counsel for the New York Stock Exchange, but it is questionable whether the listening committee members were enlightened by what they heard. The layman was at a definite disadvantage, and most of the members were laymen in this field, no matter how familiar they might be with banking problems.

The House Committee on Interstate and Foreign Commerce also held hearings over the six-week period of February 14 to March 24, 1934. Between the evidence collected on H. R. 7852 and its successor after revision, H. R. 8720, the House Committee accumulated in the neighborhood of a thousand heavily documented pages of testimony.<sup>94</sup> Most of the testimony came from those opposing the bill. Representatives of the stock exchanges or brokerage houses were particularly in evidence. The administration was represented by Messrs. Landis, Corcoran, Assistant Secretary of Commerce Dickinson, and others. Investors were conspicuous by their absence.

After a few days of hearings the original bill revealed numerous defects. It was replaced by a second version, also the product of Messrs. Corcoran and Cohen, after a conference attended by representatives of the Treasury, the Federal Reserve Board, Representative Rayburn and Mr. Pecora, although the latter stated during the committee hearings that he had been unable to attend the final meeting at which the actual drafting was completed.

The new bill (H. R. 9323) was introduced on April 25 and was reported by Chairman Rayburn on April 27, 1934.<sup>95</sup> It was considered under a special order permitting seven hours general

<sup>94</sup> Hearings before the House Committee on Interstate and Foreign Commerce, 73rd Cong., 2nd Sess., on H. R. 7852 and H. R. 8720, February 14-May 24, 1934. 941 pages.

<sup>95</sup> H. Report 1383, 73rd Cong., 2nd Sess., April 27, 1934. This bill differed materially from the previous House measures and also from S. 3420.

debate and free opportunity for offering amendments. Debate began on April 30. The report accompanying the bill was a fine example of legal exposition. It included both the majority and minority views on the bills and set forth in clear fashion the fundamentals of the proposed enactment. Members of the House complimented the committee on its lucid report; the praise seems well merited.

Chairman Rayburn seemed to feel called upon to make a statement as to the question of authorship. "The bill that is before you today, it matters not what the propagandists who oppose any sort of legislation may say, is the bill of no one man or group of men, except the 25 members of the Committee on Interstate and Foreign Commerce of the House."<sup>96</sup>

At a later stage in the proceedings when attention was called to the fact that Mr. Rayburn had brought Benjamin Cohen on to the floor of the House to aid him in defending and explaining the bill, Mr. Rayburn rose and defended his conduct in a statement that was revealing. "Now our committee sits year in and year out considering the most technical problems of any that come in this House—railroads, transportation of all sorts. We are laymen. We do not arrogate to ourselves all the knowledge in the universe."<sup>97</sup>

<sup>96</sup> *Congressional Record*, 73rd Cong., 2nd Sess., p. 7693, April 30, 1934.

<sup>97</sup> *Ibid.*, p. 8013, May 3, 1934. The statement of Mr. Britten in calling attention to Mr. Cohen's presence on the floor of the House is of interest because it recognizes the problem confronting any group of laymen seeking to grapple with the technical details of anything as complex as stock exchange regulations:

"I am sorry that I started all this, because I truly believe that no one on the floor understands this legislation as does the boyish Mr. Cohen...

"I told the Chairman of the Committee [Mr. Rayburn] a while ago that I would have no objection to Mr. Cohen being on the floor. I think he ought to be here. The language in this bill is very complicated and the chairman of the committee, one of the most industrious men in Congress or on Capitol Hill, cannot possibly comprehend all of the intricacies carried in this legislation, and for the benefit of the House someone who can interpret the language ought to be permitted to sit here on the floor. I hope the gentlemen on this side will not object to Mr. Cohen being permitted to stay here."



Discussion in the House was sterile. It frequently descended to items of a personal nature. Charges were hurled that the bill was dictated from above and that even its nominal sponsor, Chairman Rayburn, was little more than lukewarm about it. Though Mr. Rayburn demurred he was not convincing for he admitted that there were parts of it that were not of his choosing. When it came time for amendments, even less tolerance was shown than had been in the case of the 1933 bill. May 4, 1934, saw the bill passed by a vote of 281 to 84.

The bill drafted by Corcoran and Cohen and introduced in the House as H. R. 9323 was also used by the Senate Committee as a basis for further hearings. Still further revisions took place until what was to become the final act was introduced in the Senate by Senator Fletcher on April 20, 1934.<sup>98</sup> It was referred to the Senate Banking Committee and immediately reported out without amendment by a vote of 11 to 8.<sup>99</sup> It was in no sense a committee bill. From the initial draft through the final revision the hand of the expert outsider was in evidence. Senator Fletcher and his associates offered suggestions in occasional matters of detail, but their contribution was a minor one. The substance of the bill as it went before the Senate was the handiwork of administration agents.

In presenting the bill before the Senate Senator Fletcher referred to the gossip about its authorship and observed, "The question as to who were the authors of this bill, is, I think wholly irrelevant, immaterial and impertinent."<sup>100</sup>

If senatorial influence had been negligible prior to debate on the floor, it did not become less so during that debate. In this instance there was a fairly informative report to accompany the bill—something that had been lacking in the case of the securities bill in 1933. Furthermore, the Senate devoted the major portion of five days to the bill. But the results were not other-

98 S. 3420, 73rd Cong., 2nd Sess.

99 S. Report 792, 73rd Cong., 2nd Sess., April 20, 1934.

100 Congressional Record, 73rd Cong., 2nd Sess., p. 8164, May 7, 1934.

wise greatly different. At the close of the general debate the amending process produced nothing except frustration. Hosts of amendments were offered, but unless they were approved by the Banking Committee, a very rare occurrence, they were rejected.<sup>101</sup> The bill was passed without great modification by a vote of 62 to 13 on May 12, 1934.<sup>102</sup>

Substantively there were some important differences between the two bills: The House bill placed administration of the act in the Federal Trade Commission while under the Senate bill a new securities commission was created for this purpose; the Senate bill was somewhat more liberal in its margin provisions than was the House bill; the Senate bill divided the supervision of margin requirements between the Federal Reserve Board and the commission whereas under the House bill this power was concentrated in the Federal Reserve Board. There were numerous other differences, but these were the major ones.

101 In all, 56 amendments were offered to the securities exchange bill, 25 of which were agreed to. Of this 25, however, 17 were offered either by Chairman Fletcher or by some other member of the Senate Banking and Currency Committee and must therefore be regarded as committee amendments. Of the 36 amendments offered by individual members not identified with the committee, 8 were agreed to and those only after the committee indicated that it did not oppose them. No amendment was accepted that materially altered the bill as it had emerged from committee. This was true even in the case of amendments offered by members of the Banking Committee unless the chairman signified his acceptance. For example, Senator Bulkley, a member of the Senate Banking Committee, presented an amendment prohibiting all margin trading one year after the act went into effect. In defending his amendment he emphasized that the Banking Committee had reported the bill by the close vote of 11 to 8. This, he argued, indicated the uncertain nature of the committee's action and should, therefore, justify independent voting on the part of individual members of the Senate on any amendments offered. On a record vote, however, his amendment was rejected 48 to 30. It is difficult to know whether this was good or bad. The highly specialized nature of the entire bill made it impossible in many cases to predict just what the effect of a particular amendment would be. The committee's uncertainty in this regard was a recognition of the baffling nature of the task before it; its reluctance to accept suggestions not passed upon by its expert counsel is understandable.

102 Actually, after debating its own bill, the Senate adopted the House approved bill [H. R. 8323] by striking out all after the enacting clause and

A fortnight elapsed before the conference committee made its report. In the Senate the conference report simply presented the bill as agreed upon by the conference.<sup>103</sup> No explanation accompanied the bill. Apparently the committee intended to put it through without explanation or discussion, for when Senator Fletcher called it up for action he stated that he anticipated no discussion and no opposition. Without explanation or preliminaries of any kind he moved its adoption, but when asked by Senator Hastings if he did not intend to make any explanation of what was agreed upon and why certain changes were made he replied, "I have no objection to making any explanation or answering any questions about the report. I do not wish to consume time unnecessarily by reviewing the whole report."<sup>104</sup> Whereupon he devoted about ten minutes to outlining a half dozen changes that had been made.

Several requests were made for postponement of consideration of the conference report for at least one day to enable members to study the report. Senator Fletcher objected, pointing out that the conference report had been filed the preceding day and that under the Senate rules it was eligible to be called up for consideration one day after being filed. He was finally prevailed upon to wait until the following day on condition that the report would be taken up as the first order of business when the Senate convened at ten-thirty a.m. On June 1, 1934, after a brief discussion by Senators Hastings and Steiwer, the conference report was agreed to without a record vote.

Again the House enjoyed a report that was both informing and ingenuous.<sup>105</sup> Accompanying the draft of the new bill approved in conference was a statement setting forth and explaining briefly twenty-six changes which had been made. Chairman Rayburn supplemented with a brief summary highlighting the chief modifications in the bill since it had passed the House.

103 S. Doc. 185, 73rd Cong., 2nd Sess., May 31, 1934.

104 *Congressional Record*, 73rd Cong., 2nd Sess., p. 10, 111, May 31, 1934.

105 H. Report 1838, 73rd Cong., 2nd Sess., June 1, 1934.

The House thus seemed to be superior to the Senate in its instrumentation for intelligent action, but it is doubtful if this advantage was capitalized upon because of the lack of time available for the kind of study that would be necessary to make informed decision possible.<sup>106</sup> Congressional action was completed when the House, after a brief debate, agreed to the conference report without a record vote, June 1, 1934.

### THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935

President Roosevelt sent his holding-company message to Congress January 4, 1935. The Holding Company Act became law August 26, 1935, thus completing the three point administration program which had begun with the Securities Act of 1933. Each of these measures had received the full support of the administration and in a very special sense each was the handiwork of the administration rather than of the Congress. The impact of Congress on these acts, all of which were long, detailed, and so technical in language that it was impossible to understand the meaning of many sections unless one possessed a rather thorough understanding of the operations of the securities and holding-company business, was in no way comparable to the amount of noise that accompanied their passage through that body. Yet in the case of the holding-company bill, as in the case of both securities bills, the first manifestations of interest in the problem had originated in Congress rather than with the President.

The first tangible evidence of interest in the need for federal regulation of public utilities began to make its appearance about 1925. Prior to that time there had been occasional remarks directed toward the power problem, but no one had gone so far as to propose positive action by the Federal Government. In 1925, however, Senator Norris of Nebraska introduced a resolution directing the Federal Trade Commission to report on the

<sup>106</sup> The need was for time as well as for information; any attempt at reform of congressional procedure is futile unless it includes means for increasing the availability of both.

control of public utilities.<sup>107</sup> Two years later Senator Walsh of Montana introduced a resolution calling for a Senate investigation of public utilities with special attention to capitalization and control by holding companies.<sup>108</sup> No action was taken on this resolution, but the following session Senator Walsh reintroduced it and after more than the usual amount of delay during which it underwent important revisions this resolution was finally passed.<sup>109</sup> In spite of Senator Walsh's vigorous objections the resolution was amended so as to make the Federal Trade Commission the investigating body rather than a committee of the Senate. Keen interest was exhibited by many members of the Senate in the public utility issue during the consideration of the Walsh resolution. This was in marked contrast to what had happened just a year before when the Montana Senator had first made his request, for then, although he had spoken at some length in support of his proposal and had incorporated several pages of statistical material dealing with public utility mergers, consolidations, etc., he had received no response whatsoever. S. Res. 83 was debated heatedly for three days. Many members participated in the discussion, and their remarks were supplemented by numerous letters, editorials and articles read into the *Record*. This seems to have been the first sustained

107 S. Resolution 329, 68th Cong., 2nd Sess., February 9, 1925. This resolution was originally a request by Senator Ernst of Kentucky for a Federal Trade Commission investigation of the American Tobacco Company. At Senator Norris' request it was amended to include a Federal Trade Commission investigation of public utilities. Pursuant to this resolution the Federal Trade Commission responded with a report (Sen. Doc. 213, 69th Cong., 2nd Sess.) summarizing its findings on the ownership and control of public utilities.

108 S. Resolution 371, 69th Cong., 2nd Sess., February 25, 1927.

109 S. Resolution 83, 70th Cong., 1st Sess., December 17, 1927. The Senate Committee on Interstate Commerce held hearings on this resolution from January 16 to 28, 1928, and reported the resolution favorably with several amendments. This resolution not only included capitalization and security practices within its terms of reference but also directed investigation of the extent to which holding companies were interested in engineering, financial, construction and management companies and of their utilization of publicity and propaganda for the purpose of achieving their aims.

discussion of the public utility issue to have taken place in Congress.

The Federal Trade Commission proceeded to carry out its task. Subsequent resolutions extended and expanded its jurisdiction.<sup>110</sup> Under the direction of the Federal Trade Commission its expert staff made many detailed studies into all phases of the utility business and reported their findings to the Senate in the form of some ninety-two printed volumes.<sup>111</sup>

Between the passage of S. Res. 83 in 1928 and the activity following the President's holding-company message in 1935, the issue of holding-company regulation became somewhat quiescent, but it was by no means dead. Numerous references appear in the *Congressional Record* throughout this period indicating its potential vigor. In 1929 the Senate passed another resolution calling for a committee investigation of the whole field of interstate transmission of power, intelligence, and communication.<sup>112</sup> This resulted in hearings which at their conclusion on March 5, 1930 materialized in the form of a new bill proposing regulation of public utilities, including holding companies.<sup>113</sup> No action was taken on this bill. In 1930-31 the *Congressional Record* began to yield unmistakable evidence of impending action on public utilities and their holding-company control. Articles by J. F. Shaughnessy, W. Z. Ripley, M. L. Ramsay, and J. B. Eastman, all advocating federal regulation, were read into the *Record* to the accompaniment of an ever increasing rumble of congressional criticism. On several occasions findings of the Federal Trade Commission investigation currently in progress were singled out for comment by individ-

110 S. J. Resolution 115, 73rd Cong., 2nd Sess. (1934).

111 A series of monthly reports from the Federal Trade Commission to the Senate on Utility Corporations, in response to S. Res. 83, 70th Cong., 1st Sess., Parts 1 to 84D inclusive, (92 documents). Part 1 filed March 15, 1929. Part 84D filed August 12, 1931.

112 S. Resolution 80, 70th Cong., 2nd Sess., (known as the Couzens resolution).

113 S. 3869, 71st Cong., 1st Sess.; also H. R. 11408, 71st Cong., 1st Sess.

ual Senators and Representatives. In January, 1932, the House of Representatives adopted a resolution authorizing its Committee on Interstate Commerce to investigate public utility holding companies and recommend legislation.<sup>114</sup> In pursuance of this resolution the committee appointed Dr. M. M. W. Splawn to prosecute the study; his activities extended over the three years, 1932-35. He made use of the findings of the Federal Trade Commission investigation and also carried on extensive researches of his own, reporting his findings to the House Committee in the form of a five-volume report comprising more than 4000 pages of material.<sup>115</sup> On July 13 and 14, 1932, Senator Norris made a long speech in the Senate on the holding-company evil in the public utility field.<sup>116</sup> It is thus seen that when the presidential message came in February, 1935, it came as a climax to a ten-year period of congressional preoccupation with this thorny problem and not as a novelty suggested for initial consideration.

There were not in either house, however, individuals of recognized standing whose sustained specialization in this particular field had won them preeminence, such as had been the case with Glass in banking legislation. Senator Walsh, who had devoted much study to public utility regulation was no longer living. Senator Norris had long been concerned with the utility issue, but his chief preoccupation was the special problem of the Muscle Shoals project. He was not a member of the Interstate Commerce Committee that had jurisdiction of this particular bill and had taken only an incidental part in the working out of the bill. Senator Wheeler of Montana had fallen heir to Senator Walsh's concern with the public utilities in general. His interest was genuine, but he had not had extensive dealings with this particular subject, and his grasp of the problem was probably not superior to that of several other members of the Senate.

114 H. Resolution 59, 72nd Cong., 1st Sess.

115 H. Report 827, 73rd Cong., 2nd Sess., February 21, 1934.

116 *Congressional Record*, 72nd Cong., 1st Sess., pp. 15195-15204; 15305-15333, July 13, 14, 1932.

The same thing was true in the House. Representative Rayburn, though a veteran member of the Interstate Commerce Committee, did not pretend to have any special knowledge or understanding of the holding company and its ramifications. Had either of these men embarked upon the task of framing a holding-company bill with a more widely recognized preeminence in this field, it appears not unlikely that the act bearing their names would have emerged more influenced by their own opinions and convictions. Since they both were keenly aware of their own limited equipment, it is not surprising that their function became more that of producer than author.

President Roosevelt's interest in doing something to reduce the power and evil effects of the holding company antedated his election to the presidency in 1932. During his administration as Governor of New York he had spoken out against abuses in the securities business; he condemned what he called the buccaneering practices of the financial operators who were using the holding-company device as one of their most potent weapons.<sup>117</sup> During his campaign for the presidency in the summer and fall of 1932, he let loose a blast against the continued misuse of this legal mechanism.<sup>118</sup> The Democratic Platform carried a plank advocating federal regulation of interstate utilities and holding companies. There was, consequently, no element of surprise in his message of January, 1935. In 1934, he had appointed a Federal Power Policy Committee, an inter-departmental committee, to study the power problem and recommend the type of regulation that seemed most advisable. This committee made its report and he forwarded it to Congress March 12, 1935.<sup>119</sup> Immediately following his message urging enactment of a law, bills were introduced by Senator Wheeler and Mr. Rayburn.<sup>120</sup> These bills were different in several re-

<sup>117</sup> *The Public Papers and Addresses of Franklin D. Roosevelt*, vol. I, chs. IV, VII.

<sup>118</sup> *Ibid.*, pp. 680, 727-742.

<sup>119</sup> House Document 137, 74th Cong., 1st Sess.

<sup>120</sup> S. 1725 and H. R. 5423, 74th Cong., 1st Sess.



spects, but Title I, that part which dealt with holding companies, was identical in both bills. Three different holding-company bills had been prepared for the President's approval.<sup>121</sup> One bill had been worked out by Messrs. Corcoran and Cohen after consultation with Moley and other presidential advisers; it was moderate in nature, visualizing strict regulation but stopping far short of outlawing or eliminating the holding company as a useful device of control. A second bill had been prepared by Dr. Splawn at the suggestion of Mr. Rayburn, who had been advised by the President that the solution of the holding-company problem was to be one of his objectives during the coming session. This bill went somewhat further than that of Corcoran and Cohen, but it also contemplated regulating rather than abolishing the holding company. The third bill, written by Herman Oliphant and Robert H. Jackson, went beyond the realm of regulation; it called for the absolute abolition of all holding companies. The President was inclined to favor the stiffer proposals; at his suggestion Corcoran and Cohen whetted up their tools and produced a bill which was in all respects more extreme than that which they had originally visualized. This was Title I of the bill on which both the House and Senate committees proceeded to hold hearings.

In the House the hearings ran from February 19 through April 15, 1935, witnesses being heard on thirty-one different days.<sup>122</sup> This was one of the most comprehensive and complete hearings ever given to any bill. Scores of persons presented evidence; the committee accumulated 2320 pages of information and argument, the great majority of which came from persons or companies who opposed the bill.

121 J. Alsop and R. Kintner, *Men Around the President* (New York, Doubleday, Doran & Company, Inc., 1939), p. 82; R. Moley, *op. cit.*, p. 316. These books are in general agreement on the various bills and their origin.

122 Hearings before House Committee on Interstate and Foreign Commerce on H. R. 5423, Public Utility Holding-Company Regulation, February 19-April 15, 1935. 2320 pages.

In the Senate the results were little different although the attitude of the chairman of the committee handling the legislation was in marked contrast to that of the chairman of the House committee.<sup>123</sup> In opening the hearings, Senator Wheeler warned the public utilities that the hearings would end at the close of the following week no matter how many persons remained who had not been heard.<sup>124</sup> His decision was motivated, he said, by the fact that he had noticed that many of those who wished to appear before his committee had already had their day before the House committee. He emphasized that he would not permit hearings to be prolonged as they had been in the House committee, and advised the public utility companies to get together and designate a few representatives who could tell their story briefly and without repetition. The Senate committee hearings ran from April 16 through April 19, 1935.

The Senate committee report accompanying the revised holding-company bill is of especial interest. It was much longer than the usual report, totalling sixty pages exclusive of the minority report submitted by Senator Hastings. Besides including a rather detailed summary of the bill, the value of which is open to question, the report carried a statement concerning the activities of the committee in their consideration of it. Its purpose was plainly that of creating the impression that the bill was the product of careful deliberation after fullest opportunity on the part of all interested parties to be heard. A sentence is worth quoting: "Every objection of the opponents of the bill was carefully considered by the committee, in the course of a week of executive sessions, spent in discussing word for word the original bill and all proposed amendments. As a result of the hearings, and the proposed amendments, the committee has so extensively amended S. 1725 that the committee has thought it advisable to report a substitute bill."<sup>125</sup>

<sup>123</sup> Hearings before Senate Committee on Interstate Commerce, 74th Cong., 1st Sess., on S. 1725, April 16 to 29, 1935. 1139 pages.

<sup>124</sup> *Ibid.*, p. 97.

<sup>125</sup> S. Report No. 621, 74th Cong., 1st Sess., May 9, 1935.

This would seem to indicate that the committee had actually taken a very active part in the writing of the bill. The minority report, however, differs in its account of the committee proceedings.

On May 9 the chairman of the committee presented to the Senate an entirely new bill, known as S. 2796, which the chairman informed the committee was the same as S. 1725, with amendments that had been adopted by the committee. This bill went to the Printer and was furnished to the Senators at an executive session of the committee on Monday morning, May 13, at 10:30 o'clock.

I, with other members of the committee, urged that action should not be taken upon this bill until members of the committee had had an opportunity to read it, but this request was not granted. The bill was ordered to be reported favorably.<sup>126</sup>

The minority report went on to state that during the executive sessions of the committee when the bill was being studied there were seldom more than four or five members present. It concluded, "We have thus presented to the Senate a bill which was voted out of committee without an opportunity for any member of the committee to read it, and accompanied by a report that was sent to the Public Printer two days before a printed copy of the bill was presented to the members of the committee."<sup>127</sup>

Discounting this statement as the grumblings of a disgruntled minority, it is still impossible to ignore its essential accuracy for it was not rebutted or denied by the chairman during Senate debate when Senator Hastings repeated the charges. It emphasizes the meager part played by the members of the committee other than the chairman in the formulation of the bill up to the time of its consideration on the floor. Not only was the bill written by persons other than congressmen or congressional employees, decisions as to the strategy of presentation were not

<sup>126</sup> *Ibid.*, Part 2.

<sup>127</sup> *Ibid.*

left to legislative determination. Nowhere is this more completely emphasized than by the remark dropped by Chairman Wheeler during the course of the committee hearings. Upon being asked by Senator White, a member of the committee, why Title I and Title II were joined when the committee had already been assured by one of the experts from the Federal Power Commission that there was no relation between them, Senator Wheeler replied, "All I can say to you is that it was suggested to me by administration people that they be placed together." <sup>128</sup>

Senate consideration of the bill began on May 29, to continue through June 11; debate was enlightening but neither systematic nor comprehensive.<sup>129</sup> Excellent analyses dealing with the wisdom of the policy envisaged alternated with carefully reasoned arguments on its constitutional aspects. No less than a dozen Senators presented formal addresses showing the results of careful research on certain phases of the proposed measure, and many others contributed briefer comments.

General debate was followed by the offering of amendments. Of approximately forty amendments adopted, roughly half were offered by the committee and half by individual members. None

<sup>128</sup> *Ibid.*, p. 233.

<sup>129</sup> Because of the highly individualistic character of Senate proceedings it frequently happens that discussion on a bill will be spotty, certain aspects coming in for the lion's share of attention to the virtual neglect of others equally important. The absence of any recognized representative of the government of the day to maintain a well-defined course throughout the debate oftentimes results in top-heavy discussions. This was true in the holding-company debate. The bill itself, 150 pages in length, was exceedingly comprehensive; it not only dealt with all phases of holding-company activity but imposed far-reaching restrictions upon interstate generation, transmission, and sale of power. Yet Senate debate was for the most part concentrated upon a few aspects of the holding-company provisions. Because of the highly controversial character of these provisions, whole sections of the bill, involving powers and regulations of enormous importance, were passed with hardly a glance. In the eyes of most Senators who voted on it the holding-company bill meant primarily, if not exclusively, section 11, providing for simplification of security structure.

were adopted unless the chairman of the committee indicated that they were acceptable. On June 11, 1935, the Senate passed the bill 56 to 32.

The Senate bill was referred immediately to the House Committee on Interstate Commerce where it was amended by substituting the entire House bill in its place, retaining only its number, and reported to the House on June 24.<sup>130</sup> The committee report gave a brief statement of the changes made and also a sectional analysis, but it was too summary to carry much information; it remained for a supplementary report by Representative Edward C. Eicher to set forth in plain language just what the differences between the Senate and House bills had been and what the present bill provided for.<sup>131</sup> Had it not been for this report many of the rank and file would have had to depend upon rumor or hearsay for this information. Still a third report was made by Mr. Pettengill in which he argued that the holding-company simplification provisions of section 11 were both unwise and unconstitutional.<sup>132</sup> This section likewise added to the informativeness of the report so that the report as a whole was a genuine contribution toward informed action.

Debate began on June 27, under a special rule permitting eight hours of general debate and unlimited opportunity to offer amendments. Unfortunately from the beginning to the end this debate was undistinguished, unenlightened and unenlightening. In introducing the discussion Chairman Rayburn again apologized for speaking from a manuscript so as to save time and prevent wandering from the record. His action was reminiscent of a similar incident during consideration of the securities bill. Very little said on the floor of the House during the general debate or the amendment process went to the substance of the bill. After a desultory pretense of amendment during which the device of *pro forma* amendments was tre-

130 H. Report 1318, 74th Cong., 1st Sess., June 24, 1935.

131 *Ibid.*, part II.

132 *Ibid.*, part III.

quently resorted to for the purpose of furthering sniping on both sides, it was passed on July 2, 1935, by a vote of 323 to 81. Debate was little more than a farce. The comment of Chairman Rayburn on the last day of the debate causes one to wonder whether this was not intended to be so. When asked just what his position was on certain proposed amendments to the bill he replied: "My position is this: I should like to see this bill in conference. I have pointed out a great many things in both bills. I think there are frailties in the House measure and also in the Senate measure, but I think we can do a better job in conference than we can here." 133

The form in which the bill passed the House, particularly the highly controversial section 11 of Title I, was considerably less drastic than that of the Senate version. Instead of stating definitely a policy of holding-company elimination, the House bill was non-committal but left large areas of discretion to the administrative agency, in this case the Securities Exchange Commission. This was not to the liking of Rayburn and the others who were intent on carrying out the President's desires for outright abolition. With the strong sentiment then existing in the House for a more moderate bill, the better strategy seemed to call for passing the bill even in its diluted form and hoping for better success when the conference report came up for approval. This piece of strategy went awry, however, for the members of the conference committee from the House refused to accept the Senate version; progress ceased, the conference committee deadlocked. House members of the committee showed their growing intransigence by refusing to permit Mr. Cohen to sit with the committee as an expert counsel for the Senate members even though the same individuals had approved his sitting with them as conferees on the securities bills. After twenty days of stagnation Mr. Rayburn moved in the House that the conferees be instructed to accept the Senate version of section 11. An acrid debate was concluded by his motion being defeated by a vote of 209 to 155, whereupon Mr. Huddleston

moved that the conferees be instructed to carry on their negotiations in a calm, deliberative manner, excluding all persons but managers. This motion opposed by Mr. Rayburn, was approved by a vote of 183 to 172.<sup>134</sup>

On August 22, after a further delay of three weeks, Mr. Rayburn again, this time successfully, sought to gain an instruction from the membership of the House. Submitting what he called a compromise on subsection b of section 11, he moved that the House instruct its conferees to accept its terms. Again he was opposed by Mr. Huddleston; charges were renewed that the House was bowing to the Senate, that the extremes of mob rule were being substituted for deliberation, and that the interests of thousands of innocent investors were being sacrificed. Moderation had no place in the argument, but when it came time to vote the administration forces had picked up the necessary votes for the motion passed by a vote of 219 to 142. Two days later the conference report carrying the already approved section 11 was agreed to with only a few minutes of debate none of which went to the provisions of the bill. The conference committee had made such extensive changes that it had found it necessary to scrap both bills and submit an entirely new one. These changes were summarized briefly in the report which accompanied the new bill, but they were lost sight of or ignored and consequently played little part in the final stages of action. Mr. Rayburn stated in passing that the conference report had been on record for consideration some two hours before the final vote was taken. Inasmuch as the House was in session throughout this time it does not seem probable that the report had come in for any careful perusal for it was a lengthy document totaling some seventy-five pages.

In the Senate the conference report received even less attention than in the House. Notice that the House had agreed to the report having reached the Senate, Senator Wheeler presented the report and it would have been voted on without any com-

<sup>134</sup> *Ibid.*, p. 12,267, August 1, 1935.

ment whatever had it not been for Senator Norris who did not even belong to the committee. The following exchange is expressive of Senator Wheeler's attitude:

The Vice President. The question is on agreeing to the conference report on Senate bill 2796.

Mr. Norris. Mr. President, I wish to say a few words before action is taken.

Mr. Wheeler. Mr. President, will the Senator permit me to make a unanimous consent request?

Mr. Norris. The Senator has the floor. I cannot keep him off the floor.

Mr. Wheeler. I was going to ask unanimous consent that the conference report be taken up for consideration at this time.

The Vice President. It is a privileged matter.

Mr. Norris. I have no objection to that, but I do object to the Chair having the conference report agreed to without permitting Senators to speak on it.

The Vice President. The conference report is now before the Senate and any Senator desiring to speak on it may do so.

Mr. Norris. Mr. President, I cheerfully yield to the Senator from Montana if he desires to speak on the question. Let him discuss it first.

Mr. Wheeler. I have no desire to do so. Proceed.<sup>185</sup>

The conference report was agreed to without record vote after a few brief remarks by Senator Norris.

<sup>185</sup> *Ibid.*, p. 14,470, August 24, 1935.



# CHAPTER III

## TARIFF LEGISLATION IN THE UNITED STATES 1890-1940

### THE TARIFF ACT OF 1890

FROM the Tariff Act of 1890 until 1940 Congress enacted seven major tariff statutes. It is a commonplace that tariff legislation in the United States has been the paradise of pressure groups. Congress has frequently filled the role of broker, responding to the demands of the several competing forces, rather than that of architect intent upon obtaining a symmetrical overall structure. Although the predisposition toward particularism is common in virtually all forms of American legislation, centrifugal tendencies have dominated tariff construction.

The Tariff Act of 1890 marked a sharp upward modification of American tariff rates. Oddly enough it came at the end of a seven-year struggle for the reduction of existing rates. That the political strategy which dictated its passage went awry seems clear for its immediate effect was a severe defeat for the Republican party in the congressional elections of 1890. The successful comeback of Mr. Cleveland in the election of 1892 was an equally important outgrowth of the Republican tariff. In order to obtain a clear-cut picture of the context of events surrounding the important act of 1890 it is necessary to go back two years and sketch briefly the sequence of developments as they occurred.

The election of 1888 ended a campaign in which tariff had dominated much of the discussion. Organized business spared no effort or expense to return a President and Congress hospitable to a continuation of the protective system then in effect. Nevertheless, factors other than tariff were chiefly responsible for the defeat of Cleveland. Ill-founded dissatisfaction with some of his administrative policies coupled with one of those internal schisms that have so frequently plagued the Democratic party permitted the Republican candidate, Benjamin Harrison, to eke out a narrow majority in the electoral college though Cleve-

land's popular vote exceeded his by more than a hundred thousand. Safe Republican majorities were gained in both House and Senate, and the election was accepted by the Republicans as a popular endorsement of protection.

With a new administration and a new Congress tariff revision held first place on the agenda. Representative Thomas B. Reed of Maine succeeded Representative Carlisle as Speaker while the chairmanship of the Ways and Means Committee fell to William McKinley of Ohio. Both were protectionists; McKinley, particularly, had an implicit faith in its importance. Under the direction of McKinley, the Ways and Means Committee reported a bill which, in general, increased the rates then in existence.<sup>1</sup> Despite vigorous criticism from the Democratic side, the bill was pushed through the House with very little opportunity for amendment. The vote on May 21, 1890, was 164 to 142 with party lines strictly observed.

The Senate Finance Committee accepted the McKinley bill as the basis for extensive hearings which lasted well into June. As reported to the Senate on June 18, 1890, the bill differed in several respects from that which had passed the House. Several hundred amendments made substantial changes although the principle of increasing rather than decreasing rates had been retained. By the time the Senate had concluded its deliberations the grand total of 496 amendments had been approved. In the final bill most of these amendments prevailed.

The Tariff Act of 1890 contained several novel features that were to become accepted features of American tariff policy in succeeding years. Three innovations in particular deserve attention: the inclusion for the first time of a complete schedule of protective duties upon agricultural products; establishment of a system of federal bounties upon sugar to offset the effect of placing that product on the free list; and the first beginnings of a reciprocal tariff policy through empowering the Chief Executive to make certain limited changes in the existing law so as to permit more flexible relationships with other countries.

The decision to place duties upon many agricultural products formerly on the free list originated within the Ways and Means Committee and was dictated almost entirely by tactical considerations. The Republican majority desired a general upward revision of all duties on manufactured goods. Aware that the farmer resented this extra burden from which he derived no benefit, the party leaders hit upon the tariff on farm products as a sop to his disgruntled mood.<sup>2</sup>

The move to place sugar on the free list was also congressionally inspired although the idea had been discussed for several years preceding 1890 and had in fact been incorporated in the Allison bill of the previous Congress.<sup>3</sup> Party strategy dictated the change that was made. Less than one seventh of our sugar supply was produced domestically. In order to make a wide popular appeal by effecting a sizeable reduction in the price of a universally used product, sugar was placed upon the free list. To placate the politically powerful though numerically small domestic sugar interests, a bounty was placed upon all domestically produced sugar. This strategy had the pleasant effect of appealing to all parties concerned and was a logical move in a year of election.

To Secretary of State Blaine more than any other single individual belongs the credit for first suggesting reciprocal tariff regulations as a means of improving the position of the United States in foreign trade. Blaine favored the reduction of tariff where it was economically feasible. But rather than make such a reduction gratuitously he urged that the Federal Government should use this valuable concession as a bargaining instrument to obtain additional advantages for American products abroad. On June 4, 1890, while the McKinley bill was before the Senate Finance Committee, Blaine wrote President Harrison urging

2 Ida M. Tarbell, *The Tariff in our Times* (New York, The Macmillan Company, 1911), p. 202.

3 *Ibid.*, pp. 196-197; see also Edward Stanwood, *American Tariff Controversies in the 19th Century* (Boston and New York, Houghton and Mifflin Company, 1903), 2 vols., II, 266-270.

that a reciprocity clause be incorporated into the pending bill.<sup>4</sup> This letter was forwarded to Congress without recommendation by the President. Senator Hale immediately introduced an amendment giving the President authority to grant free entry to certain products from other countries in return for similar concessions from them. Naturally such a provision loomed as a serious threat to those who feared the competition of foreign products so the amendment was throttled. In its place the committee suggested the provision that eventually became a part of the act. The substitute merely empowered the President to remove products from the established free list when in his opinion the countries in which such products originated were discriminating against American products. Blaine's proposal to create a positive instrument for negotiation was replaced by a purely negative power which could be used for retaliatory purposes only. Viewed retrospectively, however, this was an important step because it marked the first breach in a tariff statute and prepared the way for increasingly flexible provisions that were to culminate forty years later in the Reciprocal Trade Agreements Act sponsored by Secretary Hull.

The Tariff Act of 1890 owed little of its inspiration to the executive. Like most tariff bills, much of it, notably the iron, steel, and tin provisions and the wool schedules, was written primarily by the associations representing these industries. As chairman of the House Ways and Means Committee, McKinley dominated all figures in the House. He was a high tariff disciple of many years' standing, was well-versed in the technical aspects of his subject, and enjoyed a large following among those who held no special views of their own. These considerations permitted him to dictate much of the actual bill as it passed the House and went to the Senate. The importance of Senator Aldrich was no less great. His whole-hearted faith in the sacred-

<sup>4</sup> Stanwood, *op. cit.*, p. 277. For example, Blaine opposed the currently popular proposal to place sugar on the free list. For, he pointed out, here was a potential market worth one hundred million dollars annually. Why not use this concession as a means of wringing from other countries equally valuable concessions for surplus American products.

ness of protection is not open to question. His profound knowledge of the tariff in all its phases gave him an advantage that could not be overcome. The enormous power which Aldrich wielded in the Senate plus the prestige which that body enjoyed as compared to the House made it inevitable that his will would prevail in those instances where he so wished.<sup>5</sup> It was the congressional branch of the government that held the initiative and dominated the construction and passage of the Tariff Act of 1890.

### THE WILSON ACT OF 1894

The McKinley Act was signed by President Harrison on October 1, 1890; its provisions went into effect five days later. Due to a curious coincidence of events in which the new tariff rates played but a minor part, the entire country underwent a sudden and highly distasteful rise in commodity prices. The Democratic party was quick to seize upon this advantage, and with great energy and resourcefulness blanketed the country with cunningly devised arguments driving home the parallelism between the new tariff and the increased cost of living. In this campaign they were aided by numerous tariff reform groups not directly interested in the political aspects of the controversy. The voters responded by swinging sharply away from the party apparently responsible. The Republican defeat was complete. In the House of Representatives a loss of 78 votes transformed a former narrow majority into an insignificant minority, the ratio changing from 169 Republicans and 159 Democrats to 88

<sup>5</sup> Senator Aldrich's importance was acknowledged by the National Association of Wool Manufacturers in its Bulletin: "Indeed it is proper that we should bear testimony in this connection to the remarkable familiarity with all branches of industry displayed by Senator Aldrich in his management of the tariff bill. Every detail of the most complicated of the schedules was present in his mind for instant response to any criticism or inquiry. Day after day he stood at his post, alert and watchful, rarely speaking except when a response was required, but armed cap-a-pie for attack from any quarter. Rarely in the history of tariff legislation in this country has the whole burden of so protracted a debate fallen upon one man, and certainly no representative in Congress ever acquitted himself more admirably of so great a responsibility." Quoted from Tarbell, *op. cit.*, pp. 207-208.

Republicans and 236 Democrats. Because of the indirect system of election and the staggered term of office the results in the Senate were less noticeable but the trend there was also anti-Republican.

Immediate relief was not forthcoming. The new Democratic majority in the House faced obstacles in the shape of the Republican Senate and a Republican President who still had two years in office. William Springer of Illinois, the new chairman of the House Ways and Means Committee, was instrumental in putting through five separate bills placing wool, cotton bagging, certain types of cotton-processing machinery, and binding twine on the free list; and reducing the duties on woolen goods, tin plates, and lead ores, but all of the bills were reported adversely in the Senate and died there.

The Democrats sensed a more significant victory in the election of 1892. With Cleveland and Harrison again the candidates the trend was still away from the Republican party. Although the Democratic majority in the House was somewhat reduced it was more than compensated for by a Democratic majority in the Senate and a Democrat in the White House. But tariff was not to be the prime issue in the new Congress. When the Democrats came into power in 1893 the country had not recovered from the panic which had seized it two months before. Rightly or wrongly, much of the blame for this economic upset was charged to the over-supply of silver currency occasioned by the Silver Purchase Act passed by the Republican Congress in 1890. This act had been passed to placate the silver advocates of the western states. It had been severely attacked at the time by all "sound money" interests. Cleveland acted to terminate this "populist" policy. He called a special session of the new Congress for the sole purpose of repealing the Silver Purchase Act. Accordingly nothing of an overt nature was accomplished on the tariff question until the first regular session in December, 1893.

The Ways and Means Committee of the House had taken advantage of the special session to get its own labors underway.

By this time Springer had given way as chairman of the Ways and Means Committee to James L. Wilson of West Virginia. Under his direction the committee began the arduous task of rewriting our entire tariff legislation. Controversy has not been absent in respect of Mr. Wilson's fitness for the task of constructing a tariff bill. On the one hand he has been charged with being an idealistic scholar, an impractical theorist, and a stubborn legalist. To others he has been an eminently practical man perhaps even too much aware of the necessity of compromise.<sup>6</sup> Whatever his virtues or his shortcomings, the bill which he reported to the House when Congress reconvened in December, 1893, pleased virtually no one.<sup>7</sup> The tariff-for-revenue Democrats felt that it fell far short of what they believed in because its chief reductions were confined to raw products while manufactured products underwent very little change. The protectionists in their turn were displeased for many of their vested interests were affected.

As it was reported to the House on December 19, 1893, the Wilson bill was primarily the work of the Ways and Means Committee and in large measure reflected the views of its chairman. House action on the bill consumed a month. With three exceptions, the bill was modified during debate only by amendments offered by the committee itself. Two of these merely changed the time of going into effect of certain provisions. The third, however, was something quite different. On January 29, 1894, shortly before the House completed its action, Representative McMillin of Tennessee offered an amendment levying a tax upon incomes. Though strongly opposed by many Democrats the amendment was adopted in Committee of the Whole 175 to 56. When the bill came before the entire House on February 1, 1894, it was passed, 204 to 140, with all Republi-

<sup>6</sup> Tarbell and Stanwood take divergent attitudes on this matter. Their differences seem typical of those expressed in contemporary commentaries. Cleveland had high regard for Wilson and believed that his leadership in the House was able and sincere. See Allan Nevins, *Grover Cleveland* (New York, Dodd, Mead and Company, 1934), pp. 563-588.

<sup>7</sup> H. Report 234 on H. R. 4864, 53rd Cong., 2nd Sess., December 19, 1893.

cans voting solidly against it. Seventeen Democrats also cast negative votes.

As it left the House the Wilson bill was primarily a congressional product with such concessions to dominant group interests as were inevitable under the circumstances. It was a Democratic measure and as such approached but by no means fulfilled the party tariff plank of 1892. President Cleveland approved the bill as it stood at this time but he had taken no action throughout the period of construction and debate.<sup>8</sup>

In the Senate it was referred a special subcommittee. This subcommittee labored for three weeks to make the reductions necessary to bring the bill more into line with the party pledges.<sup>9</sup> Just as the subcommittee was completing its labors certain powerful Democratic senators let it be known that their support of the bill could be purchased only by significant and far-reaching changes, all in the direction of substantially increased rates on particular products.<sup>10</sup> Others also made lesser demands so that the number of Democratic votes which depended upon changes in particular items was more than enough to defeat the measure as a whole. It was thus clear that unless numerous concessions were granted the Democratic party would have to admit to the country that it was unable to enact a tariff measure. The recalcitrant Democrats, led by Gorman and Brice, insisted that the bill be taken out of the hands of the subcommittee and so modified that a caucus of the Democrats in the Senate could guarantee its passage.<sup>11</sup> Holding the whip hand in the form of sufficient votes to back up their ultimatum, this little group won and the process of destroying the integrity of the bill was begun.

A new subcommittee of the Finance Committee set to work to make enough changes in individual items and schedules to meet the specific demands of those Democrats who had placed

<sup>8</sup> Nevins, *op. cit.*, p. 564.

<sup>9</sup> Tarbell, *op. cit.*, p. 221; Stanwood, *op. cit.*, p. 328.

<sup>10</sup> Tarbell, *op. cit.*, pp. 222-228; Stanwood, *op. cit.*, pp. 326-328.



a price upon their votes. In consequence, the several dominant industrial interests, in effect, wrote their own tariff bill. This was substantially true of sugar, iron, steel, and cotton; others did the same thing but in a lesser degree.<sup>12</sup> The bill was reported to the Senate on March 20, 1894. Debate began on April 2. From then until July 3 when the Senate approved the bill the depredations continued unabated. The sort of bargaining and barter which had characterized the work of the subcommittee was continued on a larger, more brazen scale on the floor of the Senate. The most notorious illustration of this was offered by Senator Quay of Pennsylvania. Threatening that unless concessions were made to industries and products in which he was interested he would filibuster the bill to death, he proceeded to make good his threat. During the debate he delivered three speeches on the tariff, in all taking up more than twelve days by his remarks which filled two hundred and thirty pages of the *Congressional Record*.<sup>13</sup>

The Senate added 634 amendments to the Wilson bill, completely changing its whole force and intent. Interestingly enough, the income tax amendment was permitted to remain undisturbed. A motion by Senator Hill of New York to strike out all provisions pertaining to the income tax was defeated 24 to 40. Although Cleveland was not an enthusiastic supporter of the income tax, he did not object to it.<sup>14</sup> The proposal had caught the public fancy, however, and actually added to the strength of the bill which was passed in the Senate on July 3, 1894, by a vote of 39 to 34 with all Republicans voting nay. The bill had been before the Senate constantly for three months.

The rape of the Wilson bill aroused indignation in the House. Had not Cleveland overplayed his hand, he might have turned

<sup>12</sup> Tarbell, *op. cit.*, p. 229.

<sup>13</sup> Tarbell, *op. cit.*, p. 228; Stanwood, *op. cit.*, p. 329.

<sup>14</sup> Robert McElroy, *Grover Cleveland* (New York, Harper and Brothers, 1923), p. 127; see also Sidney Ratner, *A Political and Social History of Federal Taxation 1789-1913* (New York, W. W. Norton and Company, Inc., 1942), p. 174. This book gives much detail on the income tax issue in and out of Congress.

this resentment to his advantage and forced some concessions from the Senate. He wrote Wilson urging him to appeal to party honor and insist upon restoring provisions which would carry out the pledges of the 1892 platform. The letter concluded, "Our abandonment of the cause or the principle upon which it [the tariff plank] rests means party perfidy and party dishonor." With the President's consent, Wilson made the letter public, but it did no good. In fact it alienated many Democrats in both houses and his influence was destroyed.<sup>15</sup> After six weeks of deadlock in conference the House conferees finally gave in on August 13, and the House accepted the Senate amendments 182 to 106. It was a bitter pill for those Democrats who had hoped for a genuine reform in American tariff policy. President Cleveland expressed his own displeasure and disappointment by permitting the bill to become law without his signature. The Wilson Act of 1894—the name is entirely unjustified—was in all too many respects a product of Congress rather than of the Chief Executive.

### THE DINGLEY ACT OF 1897

During the next four years tariff was to remain one of the most pressing problems confronting Congress but it was not to monopolize attention as it had during the previous decade. From 1894 until after the election of McKinley in 1896 the silver issue enjoyed almost equal rank with the tariff and sometimes actually overshadowed it in momentary importance. Silver and tariff were inseparable; this was to have more than a little to do with several of the most important schedules finally enacted into the tariff bill.

When the Republicans won control of the House in 1894 Mr. Reed of Maine once more became Speaker. McKinley, the former Chairman of the Ways and Means Committee, was no longer in Congress and for his successor Reed chose Nelson Dingley of Maine. Dingley was a veteran on tariff matters hav-

<sup>15</sup> Nevins, *op. cit.*, p. 581. Had Cleveland chosen to act sooner, Nevins believes, he could have attained his objectives.

ing served several terms on the committee he now chaired. Like McKinley before him, Dingley accepted the doctrine of protection on faith, but he recognized that even divine blessings can be overdone. Accordingly the bill which was worked out under his personal direction was a moderate one.<sup>16</sup> It placed a duty on wool which had been free under the Wilson Act but the duty was only slightly more than half that of the McKinley Act of 1890. As for the majority of other rates the increases were for the most part reasonable, fifteen per cent being the most common increase. None of the new rates were as high as those which had been imposed in the McKinley Act.<sup>17</sup> After less than four hours debate the overwhelmingly Republican House approved the Dingley bill 228 to 83 but it was immediately buried by a Senate Finance Committee dominated by free-silver Republicans and tariff revision received no further attention during the Fifty-fourth Congress.

The presidential election of 1896 was the next event on the political calendar. The persistently depressed condition of business since 1893 had done much to convince the public that low tariff and prosperity did not go hand in hand, and to persuade them that perhaps they had been too hasty in their condemnation of the Act of 1890. The election of 1894 had proved conclusively that the Republicans had been forgiven. McKinley's one hundred percentism so far as the tariff was concerned was the chief reason for his special availability for the Republican nomination because the strategy of the inner circle was to conduct the campaign on the tariff issue.

But the silver issue would not down. The Populist movement was gaining momentum and the Democratic party upset Republican strategy by waging its campaign for free coinage of silver. The Republican party had no choice but to accept the challenge. Though McKinley was really an unknown quantity on the money question, having a record in Congress on this score that did not bear too close scrutiny, the only line that he and his

16 H. Report 3, 54th Cong., 1st Sess., December 26, 1895.

17 Stanwood, *op. cit.*, p. 372.

advisers could take was sound moneyism, and the campaign was fought out almost exclusively on this single issue. Many persons who could not brook McKinley's tariff views were obliged to vote for him in this campaign because of their even greater distaste for the financial heresies of Bryan. In spite of losing many votes in the Far West the Republican party won a sweeping victory, capturing the presidency and majorities in both houses of Congress.<sup>18</sup>

Silver had been the issue in the election and might well have been expected to receive first attention from the new Congress but such was not the case. President McKinley requested immediate consideration of the tariff. In his message to the special session he asked for legislation which would increase the revenue, preserve the home market, revive and increase manufactures, relieve and encourage agriculture, etc.<sup>19</sup> It was a request for a comprehensive application of the principle of protection which had been so dear to his heart during his leadership of the Ways and Means Committee of the House. Instantaneous response met his request. Although it had no legal standing the Republican membership of the Ways and Means Committee of the previous Congress had been returned intact in the election of 1896. At the suggestion of Mr. Reed, who was scheduled to succeed himself as Speaker, this group had continued its work and when the President convoked the special session it had a bill all but completed. It was reported to the House on March 19, 1897.<sup>20</sup> After a cursory debate in which only 22 of its 163 schedules were discussed, the bill was approved on March 31, 1897, 205 to 122. As the bill had been reported from the Ways and Means Committee and passed by the House it was singularly moderate. On the whole it was less severe in its protective

18 The new House was composed of 202 Republicans, 130 Democrats, and 25 Populists and Silver Republicans. The Senate contained 46 Republicans, 34 Democrats, and 10 others of varying affiliations but reflecting the radicalism of the time.

19 *Congressional Record*, 55th Cong., 1st Sess., pp. 12-13, March 15, 1897.

20 H. Report 1 on H. R. 379, 55th Cong., 1st Sess., March 19, 1897.

duties than either the McKinley Act of 1890 or the Dingley bill of 1895. Many of the rates established in the Democratic Wilson Act of 1894 were retained with the explanation that they had been dictated by the industries concerned at that time and were still satisfactory. The irony of this statement could not have failed to pain the bona-fide low tariff Democrats still in the House.

The Senate Finance Committee labored over the Dingley bill for two months. In general the changes—the number of which ran into hundreds—were in the direction of still lower rates. Senator Aldrich was the leading spirit in this trend toward moderation. He argued that the voters of the country had indicated a desire for higher tariff rates but were opposed to extreme legislation. Consequently, the bill which the Finance Committee reported to the Senate on May 4, 1897, was an extremely fair and reasonable application of the protective principle.<sup>21</sup>

<sup>21</sup> It may seem strange that Aldrich, who had been and who was again to be the chief exponent of high protection, should take the lead in this effort to produce a moderate bill. The reasons underlying his action were not made clear in the speech he delivered before the Senate when debate opened and at no subsequent time did he give the real cause of his action. Foreign powers—specifically England and more particularly France—lay at the root of his desire to see a moderate tariff law enacted. Before Congress began work on the tariff Aldrich and other Republican leaders in the Senate, with the knowledge and approval of President-elect McKinley, had made plans which they hoped would lead to an international bimetallism agreement with France and England. Bimetallism seemed to Aldrich and his associates to offer the most likely basis for reuniting the two wings of the Republican party which had been so badly ruptured over the silver issue. But in order for bimetallism to become a reality it must also be accepted by the other great commercial powers with which we traded. Senator Wolcott went to France and England for preliminary conversations early in January, 1897. He found sentiment there favorable to bimetallism, but discovered, particularly in France, that the forthcoming tariff legislation in this country was being awaited with great interest. Those with whom he conferred made it clear that the success of any negotiations on monetary matters depended directly upon the enactment of American import duties which would permit France to find ready markets for her wines, silks, woollens, gloves, etc. He

In his introductory remarks before the Senate on May 25, Senator Aldrich explained the policy by which the committee had been guided. He expressed the belief that although the House rates had been reduced in most cases they had not gone below the protective point in any instance. During the early stages of Senate discussion the recommendations of the committee were followed rather closely.<sup>22</sup> Early in the second week the complexion of things began to change. For one thing Senator Aldrich who dominated not only the Finance Committee but also the entire Republican party in the Senate was forced by poor health to leave Washington to remain away during the remainder of the debate on the bill. Allison who replaced him as the bill's guardian had neither the inclination nor the ability to withstand the attacks that were to be made on its integrity.

A second factor contributed to the disintegration process that was soon to emasculate the bill beyond recognition. The Finance Committee at the time was composed of six Republicans, six Democrats, and Senator Jones of Nevada, a "Silver Republican", who was thus in a position to sell his vote to the highest bidder. The balance of power which Jones held in the Finance Committee was duplicated by the position of the "Silver Republicans" in the Senate as a whole.

The silver senators were also the "wool senators." They did not hesitate to let it be known that higher rates on wool and

impressed his associates with the inseparability of these two matters and this led to the decision to report a moderate bill.

President McKinley seems to have concurred in this decision and he attempted to back the committee in its fight. The power of the silver senators was too great, however, and both Aldrich and McKinley suffered defeat. See N. W. Stephenson, *Nelson W. Aldrich* (New York, Charles Scribner's Sons, 1930), pp. 138-151; also T. F. Dawson, *Life and Character of Edward Oliver Wolcott* (New York, The Knickerbocker Press, 1911), 2 vols., I, 653-659.

<sup>22</sup> There was no general debate in the Senate. In accordance with common practice the Senate proceeded immediately to reading the bill for amendment. Because of the extreme liberality of the Senate rules any Senator is free to halt proceedings at any time by unburdening himself of such re-

woolen goods was to be their price for affirmative action on the bill as a whole.<sup>23</sup> It was not long until the Finance Committee itself was withdrawing its previously moderate amendments and substituting others providing for substantially higher rates. Naturally the upward revisions could not be confined to wool. Before the movement had run its course those interests which represented many of the most important products had demanded and received similar treatment. The Republican plan to reduce rates below those fixed in the House had run into an unexpected and uncontrollable squall. Senator Aldrich rushed back to be present at the final vote but the damage had been done. The final vote on July 7, 1897, was 38 to 28 in favor of the bill as modified, no less than 872 amendments having been added in the Senate.

For almost two weeks the conference committee labored to reconcile the differences between the House and Senate versions. The conference report was a victory for the Senate; the rates on about eighty per cent of the items were higher than those proposed originally by either the Ways and Means Committee of the House or the Finance Committee of the Senate.<sup>24</sup> The House approved the conference report, July 19, the same day it was received, 187 to 116. Final vote in the Senate was postponed until July 24 when the conference report was agreed to 40 to 30. President McKinley signed the Dingley Act the same day.

The Dingley Act started out to be one thing and ended as something quite different. Although it was never a purely administration measure it began as a vehicle for carrying into effect one of the main aims of the McKinley administration. This it remained in principle and largely in detail when it

<sup>23</sup> F. W. Taussig, *The Tariff History of the United States* (New York, G. P. Putnam and Sons, 1931), p. 323. See also Tarbell, *op. cit.*, pp. 245-251. The influence of the Wool Growers Association and the National Association of Wool Manufacturers resembled that which the "sugar trust" had exerted in 1894. Mr. S. N. D. North, Secretary of the Association, actually served as confidential clerk of the Senate Finance Committee.

<sup>24</sup> Stanwood, *op. cit.*, p. 389.

emerged from the House. Committee action in the Senate remained in harmony with this objective. Sudden coups by individual groups and interests in the Senate upset the party strategy and destroyed the unity of the bill as a whole. The final product was the fruit of congressional centrifugality at its worst. Notwithstanding McKinley's deep faith in high tariff and his activity in its behalf while he had been in Congress, he was not an important factor in the Dingley Act.<sup>25</sup>

### THE PAYNE-ALDRICH TARIFF ACT OF 1909

Despite the extremity of many of its rates, the Dingley Act remained in force longer than any other general tariff act. Continued prosperity blessed the country and the Republican party was not the least of the beneficiaries. But a certain uneasiness existed in some quarters.<sup>26</sup> After the election of 1904 several influential figures who had previously been steadfast believers in the soundness of the Dingley Act began to modify their views. One of the most important of these was Secretary of War Root. Root advised President Roosevelt that a move for reduction of some of the rates then in effect was desirable.<sup>27</sup> The President was impressed by Root's argument for he had frequently leaned heavily upon the latter in formulating his own policy on the tariff, a subject about which he knew almost nothing. But when Roosevelt consulted Senator Aldrich and Speaker Cannon both of them threw cold water on the idea so

<sup>25</sup> See Charles S. Olcott, *The Life of William McKinley* (New York, Houghton Mifflin Company, 1916), 2 vols., I, 353-355.

<sup>26</sup> Stanwood, *op. cit.*, p. 362.

<sup>27</sup> Richard Cleveland Baker, *The Tariff Under Roosevelt and Taft* (Hastings, Nebraska, Democrat Printing Company, 1941), p. 45. This book provides an excellent account of the personal and political factors underlying the tariff issue throughout the administrations of Roosevelt and Taft. Perhaps the strongest impression left by the book is the exceedingly weak position assumed by President Roosevelt on tariff matters throughout his entire administration. Here, possibly, more than in any other field he seemed to yield to the views of the ultra conservatives among his congressional advisers. His record in this matter is not a flattering one.



he decided to wait.<sup>28</sup> His annual message in December, 1904, did not mention the tariff, but he indicated privately that he might send a special message on the subject later in the session. Further consultation with Aldrich, Cannon, and other congressional leaders persuaded him to let the matter wait.

A similar situation arose in 1906. Secretary of War Taft warned that downward revisions were necessary; like views were expressed by other prominent Republicans, notably Senator Beveridge of Indiana. Senator Lodge wrote Roosevelt suggesting that he make some definite statement in his next annual message.<sup>29</sup> Roosevelt again broached the subject to Cannon and again received a negative answer and again his message contained nothing on the tariff.<sup>30</sup>

The Republicans incorporated a tariff revision plank in their platform of 1908. The new program advocated by the Republicans—faintly and without elaboration in 1904 and strongly in 1908—involved the appealing but elusive "equalization of the cost of production at home and abroad" formula.

In accordance with its campaign pledges the Republican Congress set about revising the tariff which had now been in effect for twelve years. Under the direction of Sereno Payne of New York, the Ways and Means Committee held hearings which lasted from November 10, 1908, until December 24, 1908. During the hearings President-elect Taft visited Washington and conferred with Speaker Cannon as well as with Payne and other leaders on the Ways and Means Committee.<sup>31</sup> He insisted upon reduction and announced that he intended to veto any measure which failed to fulfill the pledges of the Republican party. The committee drew up a measure which in many respects complied with the letter and spirit of the party pledges but this draft was never made public.<sup>32</sup> When Mr. Taft was inaugurated

<sup>28</sup> *Ibid.*, pp. 46-49.

<sup>29</sup> *Ibid.*, pp. 63.

<sup>30</sup> *Ibid.*, p. 65.

<sup>31</sup> "Notes", *Journal of Political Economy*, XVII, 39 (January, 1909).

<sup>32</sup> H. Parker Willis, "The Tariff of 1909", *Journal of Political Economy*, XVIII, 2 (January, 1910).

on March 4, 1909, he indicated once more that he intended to press for immediate reduction and convened Congress in special session for March 15. He left the task of making specific recommendations to the congressional leaders.<sup>33</sup> Actually Mr. Taft played much more than a passive role but he chose to deal privately and behind the scenes. This strategy created an impression of disinterestedness or indifference that was misleading.<sup>34</sup> As it was, his efforts were largely ineffectual for by refusing to speak out he failed to take advantage of a strong public opinion which would have given him almost solid backing. His tardiness in taking the battle out into the open not only cost him dearly in legislation unachieved but laid him vulnerable to charges of catering to the interests of big business without any basis in fact.<sup>35</sup>

The bill as first drafted by the Ways and Means Committee under Payne's direction was praiseworthy. Several important additions were made to the free list, among which were lumber, hides, and petroleum.<sup>36</sup> Woolen and cotton goods had under-

33 Taft distrusted the leadership of Cannon and considered making a fight to replace him as Speaker in order to be sure of greater cooperation in the enactment of his legislative program. He was dissuaded in this by Roosevelt, Root, and Capper of Kansas. Baker, *op. cit.*, p. 79, note 8. H. F. Pringle, *The Life and Times of William Howard Taft* (New York, Farrar and Rinehart, 1939), I, 406.

34 Baker, *op. cit.*, p. 101.

35 It is difficult to resist the feeling that Taft was the victim of charges of favoritism to industrial interests, etc., when as a matter of fact he was almost the single leading figure who had the courage to insist that the traditional policy of high protection must go. He was not a politician and he lacked the adeptness that enabled Roosevelt to profess belief in one course of action while practicing another. His decision to deal with members of Congress privately and personally rather than through the headlines was unfortunate. When he saw his mistake it was too late to do more than salvage a small part of the total bill. His prestige suffered, but it is hardly fair to charge his failure to insincerity or lack of courage. In both these qualities Taft compares more than favorably with his colorful predecessor.

36 Willis, *op. cit.*, pp. 3-4.

gone no reduction thanks to the powerful representation made in their behalf by well-organized lobbies during the hearings. Nevertheless, the bill as a whole was moderate.

The chief reason for the failure of the original Payne bill to see the light of day was political and had to do with matters of economics only indirectly. Cannon and his lieutenants foresaw the possibility of defeat in the reorganization of the House that would come with the beginning of the new Congress, should the Insurgents cooperate with the Democrats. By using tariff concessions as a bargaining instrument the House leadership was able to consolidate its position at least temporarily.<sup>37</sup>

When the House Ways and Means Committee reported its tariff bill out on March 16, 1909, it bore little resemblance to the original Payne bill.<sup>38</sup> The groundwork of the House leaders had been thorough. Several of the Insurgents themselves as well as several Democrats had been quieted by specific concessions. On April 10, 1909, the bill was passed by a vote of 217 to 161, changed in only minor particulars from the form in which it had been reported three weeks before. Throughout this period President Taft refrained from public expression, although he continued to exert constant pressure behind the scenes.<sup>39</sup> As the bill emerged from the House it was certainly not a victory for the President. Concessions to individual interests had eaten away several of its most important "downward revision" schedules. Yet sight must not be lost of the fact that the new bill was a distinct improvement over the existing Dingley law. Even with the increases already alluded to the Payne bill contained much to praise. As Professor Taussig expressed it, "None the less, the House bill made significant reductions: none of the revolutionary character, or likely to have serious

<sup>37</sup> *Ibid.*, pp. 6-8.

<sup>38</sup> H. Report 1, 61st Cong., 1st Sess., March 16, 1909.

<sup>39</sup> Willis, *op. cit.*, p. 101.

economic effects, yet indicative of a disposition to bring about some 'real' revision." <sup>40</sup>

The Senate Finance Committee reported the Payne bill on April 12, only two days after its passage in the House. In this brief interim the Senate protectionists under the leadership of Senator Aldrich had restored the duties on iron ore, hides, and coal, and had increased those on lumber, cotton goods, hosiery, etc. <sup>41</sup> The Insurgent Republicans in the Senate, a group whose dissidence was a strange mixture of radicalism and conservatism, had long been looking for some issue upon which to express their dissatisfaction with the general state of affairs. They chose the tariff as the issue upon which to cross swords with the stand-pat Republican leaders although several of their number were ardent protectionists and even voted for specific increases in the current bill when they happened to affect products from their own state. At any rate, it was to the Insurgents that the vigorous though futile tariff debate of 1909 must be credited.

Senator Dolliver devoted a great deal of study to the textile provisions of the tariff during the period preceding its consideration in the Senate. He acquainted himself thoroughly with the schedules on woolen and cotton goods and prepared to force the issue on these schedules by taking advantage of his prerogative of unlimited debate. But all of the fireworks resulted in surprisingly little material achievement, for the woolen and cotton goods schedules were approved in exactly the same form in which they had been reported by the committee. <sup>42</sup>

<sup>40</sup> *Op. cit.*, p. 372. Iron ore, hides, and coal had been placed on the free list in the House bill; rates on several other commodities had been reduced.

<sup>41</sup> Baker, *op. cit.*, p. 81.

<sup>42</sup> Willis, *op. cit.*, p. 20. Other members of the Insurgents concentrated their fire on certain selected commodities: Cummins of Iowa taking crockery and steel tariffs; Bristow of Kansas, white lead and refined sugar; and Beveridge of Indiana, tobacco. Only minor changes resulted, however, and the total effect was small. Cf. Baker, *op. cit.*, pp. 82-84.

In general the tariff schedules were approved as written in committee. On a few matters other than import duties some interesting developments took place. The House bill carried a provision for an inheritance tax in compliance with a recommendation which President Taft had made at the beginning of the session. The Senate committee struck out this provision and reaped a storm of abuse from the Insurgents and Democrats. After much negotiation between the Democrats and Insurgents a bill providing for an income tax was drawn and introduced much to the discomfiture of the Aldrich group.<sup>43</sup> The temporary coalition of Democrats and Insurgent Republicans had enough votes to put the income tax over in spite of anything the regulars could do unless some means could be devised to break down the solidarity of the rebels. At this juncture President Taft came to the rescue of the party. On June 16, 1909, in a special message to Congress, he expressed strong opposition to the pending personal income tax proposal and made two specific recommendations—amendment of the Constitution so as to permit an unapportioned income tax upon individual incomes, and immediate enactment of a tax upon the net income of corporations.<sup>44</sup> This suggestion split the coalition by drawing away some of its members who accepted this new proposal in lieu of their own. The President's intervention saved the Republican leadership much embarrassment and had he so wished there seems little doubt that he could have used this opportunity to have exacted some concessions in the form of tariff reductions.<sup>45</sup>

The corporation tax provision was drafted by Senator Root of New York and Attorney-General Wickersham—presumably with the approval of Taft. It was much too mild to please the

<sup>43</sup> Willis, *op. cit.*, pp. 26-27. Senator Bailey (Democrat) and Senator Cummins (Republican) were the authors of the bill.

<sup>44</sup> Stephenson asserts that this strategy was suggested by Senator Aldrich. Stephenson, *op. cit.*, pp. 355-356.

<sup>45</sup> Willis, *op. cit.*, p. 27.

Insurgents. All regulatory provisions were omitted, self-assessment was adopted and relatively light penalties for misrepresentations virtually invited violation. Corporate incomes under \$5,000 were exempted from the tax.<sup>46</sup>

A new provision introducing a retaliatory principle into American tariff legislation also made its appearance in this act. The final bill provided for a schedule of minimum rates with the proviso that the President could invoke a second schedule imposing an increase of twenty-five per cent against individual countries if he found that such country was discriminating against American trade. President Taft took no part in the working out of these provisions. He did show his good faith in desiring bona-fide reductions by his refusal to employ the authority given him. On April 1, 1910, he stated that there was no undue discrimination on the part of any country and directed that the minimum rates be universally applied.<sup>47</sup>

Two other minor features of the Payne-Aldrich Act are worthy of mention. The reciprocity provisions of the Dingley Act of 1897 were repealed and the President was directed to terminate all such agreements then in effect. This step was dictated chiefly by the vested interests affected adversely by this section. The Insurgents were critical of the unscientific manner in which tariff schedules were constructed and urged the creation of a tariff commission which could furnish Congress with expert information on tariff and related matters.<sup>48</sup> Aldrich's opposition prevented this innovation but a compromise was agreed upon. In place of a newly created special commission answerable to Congress it was provided that the President could employ "such persons as may be required" to aid him in

<sup>46</sup> *Ibid.*

<sup>47</sup> Taussig, *op. cit.*, p. 404.

<sup>48</sup> Theory must be distinguished from practice in discussing the recommendations of the Insurgents. While they loosed frequent blasts against the iniquitous methods employed in the construction of tariff schedules, hardly a single one of them refrained from voting for specific raises to protect products of certain favored industries.

assembling the data necessary for effectuating the retaliatory provisions of the new bill.<sup>49</sup> Taft himself apparently figured in neither of these amendments.

The bill that the Senate approved by a vote of 45 to 34 on July 8, 1909, after eleven weeks of fevered debate was little more than a caricature of the tariff reform which Taft had envisaged at the time of his inauguration. Of the 847 amendments added in the Senate more than half were increases more or less far-reaching in scope. Many of these increases had been dictated by special interests which were powerful enough to write almost any tariff schedule they might choose. The woolen industry was outstanding in this respect but it was not far ahead of the cotton textile industry. Both were situated in the heart of New England and enjoyed the special advantage of Senator Aldrich's advocacy. In matters pertaining to the tariff Aldrich's conception of American interests extended scarcely beyond the borders of the Northeast, but he realized that the Northeast by itself did not embrace sufficient votes to put over a bill so he extended an invitation to the high tariff senators of the Far West. By exchanging support on hides, lumber, and sugar for votes in favor of coal, iron, and textiles a most convenient arrangement was worked out.

In appointing the House conferees Cannon eliminated every person who had shown any tendency toward liberalism during the preceding debate. He had to keep Mr. Payne as chairman but for the rest he picked a group who were above suspicion.<sup>50</sup>

49 Taussig, *op. cit.*, p. 405. The provision read: "To secure information to assist the President in the discharge of the duties imposed upon him by this section, and the officers of the government in the administration of the customs laws, the President is authorized to employ such persons as may be required."

Congress appropriated funds to implement this provision in 1909 and again in 1910. In September, 1909, Taft appointed a Tariff Board of three members, all Republicans. On March 4, 1911, he added two Democrats, thus increasing the membership to five. In 1911 the Democratically controlled Congress refused to appropriate further funds and the board's existence terminated on June 30, 1912.

50 Willis, *op. cit.*, p. 29.

The President complained of this latest bit of treachery in a letter to his brother, "I don't think that Cannon played square. He nominated a conference committee that had four high tariff men on it. . . .who would not fight for the low provisions of the House bill."<sup>51</sup>

Perhaps because of this, Taft decided to take matters into his own hands in the hope of salvaging at least part of what he considered to be the pledges of the Republican party. In a series of White House conferences supplemented by many individual conferences with Senator Aldrich and other key figures he seized the initiative and in the case of several schedules insisted upon significant reductions. Over the objections of the powerful far western clique he succeeded in getting hides placed back on the free list. In a headlong clash with Cannon he prevailed in obtaining a large reduction in the tariff on gloves in spite of the fact that Cannon was personally committed to the retention of this item in the interests of his old friend and colleague, Littauer. Finally, perhaps Taft's most significant victory was in connection with the rate on lumber. Under the Dingley Act the rate had been two dollars a thousand. The Payne bill passed by the House had reduced this to one dollar, but the Aldrich bill had restored the two dollar rate. Taft had originally hoped to place lumber on the free list but had finally decided that this was impossible and had agreed upon a tariff rate of \$1.25 per thousand. Cannon, already irritated by his defeat on the glove schedule, protested on this point and threatened to upset everything if Taft persisted in his demand. Aldrich counselled Taft to compromise on \$1.50 but he knew not his man for the latter remained adamant, in fact went Cannon one better. He warned that unless his demands were met he would immediately call an extra session to deal with the entire tariff problem again. This would throw upon Congress full responsibility for the failure to carry out the campaign promises made by the party.

<sup>51</sup> Quoted in Baker, *op. cit.*, p. 96, note 74. Also quoted in Pringle, *op. cit.*, p. 436.



Even Cannon could not resist in the face of such a threat and Taft's wishes were met.<sup>52</sup>

The conference report was approved by the House on July 31, 1909, 195 to 183, and by the Senate, 70 to 22, on August 5, 1909. The act as a whole was a far cry from the general downward revision that Taft had promised during his campaign and in his inaugural address. A contemporary observer remarked, "There is no doubt that the President's influence, whatever it was, generally tended toward the reduction of duties and the elimination of vicious provisions, but it was exerted so mildly and with so little insistence that, until the very end of the discussion, hardly any attention was paid to it by the men who were engaged in framing the final draft."<sup>53</sup>

Taft signed the bill because he believed that with all of its shortcomings it contained some genuine improvements over the existing law. Should he veto it, he reasoned, it would destroy the Republican party for some time to come and throw the responsibility of shaping tariff policy into the hands of the Democrats whom he believed totally incapable of producing a law that would work.

#### THE UNDERWOOD TARIFF OF 1913

The Democratic Underwood Tariff Act of 1913, coming within four years of the Republican Payne-Aldrich Act, affords an excellent basis for contrasting two radically different methods of tariff construction. Shifts in party control were not unimportant but the striking contrast between the events of 1909 and those of 1913 was due chiefly to the totally different conceptions of the presidency held by the incumbents. Other factors enabled Mr. Wilson to put into effect his theories of presidential leadership—factors which were not present during Taft's administration. For example, Taft came into office at the end of twelve years of Republican ascendancy. This meant that he was forced to work with a set of congressional leaders who

<sup>52</sup> Pringle, *op. cit.*, pp. 439-470.

<sup>53</sup> Willis, *op. cit.*, p. 31.

had been in power for more than a decade. Such dominating figures as Cannon and Aldrich regarded themselves as the actual leaders of their party; accordingly they were much less amenable to presidential suggestions than was true in the case of the Democratic leaders during the first years of Wilson's administration.

In the elections of 1910 the Republican party suffered severe setbacks. The situation was reminiscent of what had happened in the election of 1890.<sup>54</sup> The depression of 1907 had not lifted with the passage of the 1909 tariff. Just as the Republicans had taken credit for the prosperity which blessed the decade following the Dingley Act of 1897 they now received the blame for the down swing.

The new Congress revealed striking changes; in the House the Republican majority of 214 was reduced to a minority of 165.<sup>55</sup> The staggered terms in the Senate prevented such drastic changes but here too the Republican party felt the lash of popular disfavor.<sup>56</sup> The new Democratic leadership in the House interpreted the election as a mandate for immediate revision of the tariff. Representative Oscar W. Underwood of Alabama succeeded to the chairmanship of the Ways and Means Committee, now composed of 14 Democrats and 7 Republicans.

Notwithstanding the insistence of the Republicans, especially President Taft, that Congress should wait until the newly created Tariff Board completed its studies before undertaking new tariff legislation, Underwood and his associates began immedi-

<sup>54</sup> H. P. Willis, "The Tariff of 1913" I, *Journal of Political Economy*, XXII, 4 (January, 1914). Willis states, "No dispassionate observer can question that the tariff issue was the main problem presented to the electorate, not only in the congressional elections immediately succeeding the passage of the law of 1909, but in the subsequent presidential election which followed two years later."

<sup>55</sup> In the 61st Congress (1909-1911) the House composition was 214 Republicans and 175 Democrats. In the 62nd Congress the ratio in the House was 165 Republicans and 228 Democrats.

<sup>56</sup> In the 61st Congress, the Senate was 60 Republicans and 32 Democrats; the 62nd Congress revealed a ratio in the Senate of 51 Republicans and 43 Democrats.

ately to draw up new plans. In lieu of a comprehensive revision of the entire law the Democrats chose to put through several separate bills correcting the most flagrant abuses in existing schedules. A series of bills known as the Underwood bills were pushed through the House during the early months of 1911. These bills were prevailingly moderate.<sup>57</sup> A fair example was that dealing with wool: it retained a tariff of 20 per cent on raw wool and of 55 per cent on woollen goods.<sup>58</sup> It was passed by the House in this form but in the Senate the rate on raw wool was raised to 35 per cent. A compromise of 29 per cent was reached in conference but when the bill reached the President he vetoed it, insisting that the cut was too great and counseling again the wisdom of awaiting the report of the Tariff Board.<sup>59</sup> Similar treatment was accorded a cotton bill and a farmers' free list bill, and the session ended with nothing accomplished. The same atmosphere of futility dominated the second session when again the House passed several tariff bills only to have them emasculated in the Senate or vetoed by the President.<sup>60</sup>

<sup>57</sup> Willis, *op. cit.*, p. 12. For a similar view see *Review of Reviews*, XLVIII, 4 (July, 1913). But for a contrary view see Henry C. Emery, "The Democrats and the Tariff", *Yale Review* (new series), II, 193-214 (January, 1913).

<sup>58</sup> Willis, *op. cit.*, p. 12.

<sup>59</sup> *Ibid.*

<sup>60</sup> Willis, *op. cit.*, p. 13. Taussig, *op. cit.*, p. 413. *Review of Reviews*, *op. cit.*, p. 4. The position taken by President Taft was puzzling and did little to enhance his popularity. In view of his frequent avowals in favor of reductions in existing tariff rates the hostility with which he destroyed the Underwood bills precipitated repeated charges of bad faith. Apparently to him tariff reduction meant Republican tariff reduction. Certainly his conduct gave color to the charge that he was more concerned with the source of tariff legislation than with its content. In truth Taft's course of action was such as to defy explanation, although certain interpretations are possible. In the first place he undoubtedly was sincere in believing that the wiser course was to await the findings of the Tariff Board which he had established under the 1909 Act. Since in his view the real objective was a tariff which met the "cost of production" principle it was futile to enact new legislation until a factual investigation provided the basis for applying this principle. A second reason, not unrelated, may also be listed. He believed that

In the presidential campaign of 1912 Taft was forced to defend the bill which he had accepted with reluctance three years before. Governor Wilson and the Democrats on the other hand were unanimous in their condemnation of the existing law. The record of the Democratic House during the preceding Congress was cited as ample proof of that party's good faith should it be given opportunity to put its program into operation. Wilson's record on the tariff was completely in accord with that of his congressional brethren. He had shown an interest in tariff as early as 1880.<sup>61</sup> For many years he had discussed it, attacking protection and advocating tariff for revenue only. From 1908 on he had taken a particularly active part in the public discussions about it. In an article in the *North American Review* for October, 1909, he opened fire on the Payne-Aldrich Act just passed, calling it "miscellaneous wrong in detail and radically wrong in principle."<sup>62</sup> He continued to mature his views in speeches, letters, and discussions between 1910 and 1912.

Victory in the election of 1912 presented the Democratic party with the opportunity to carry out the tariff reforms which they had been advocating for more than a decade. President-elect Wilson was convinced of the necessity of strong executive leadership if his party was to escape a repetition of the events in 1909. He believed that Cleveland's failure to accomplish his objectives in tariff reform had been due chiefly to his failure to cooperate with Congress and he resolved to avoid the pitfalls

any tariff bill passed should afford reasonable protection and should not be directed solely at raising revenue. Actually, as has been pointed out, the Underwood bills were moderate in the extreme—certainly not to be classified as merely revenue bills—but Taft, in the absence of accurate factual information, may have been acting from the most honorable motives. On the other hand, it is not beyond the realm of possibility that, goaded from all sides, he became suspicious of all things emerging from the Democratic camp and in a spirit of bitterness condemned indiscriminately all overtures made.

61 R. S. Baker, *Woodrow Wilson, Life and Letters* (Garden City, New York, Doubleday, Page and Company, 1927-1939), IV, 96.

62 *Ibid.*

which had brought disaster to Taft.<sup>63</sup> But with which groups should he cooperate? He had insisted that he would deal only with the progressive elements. As a statement of faith this had been effective but as a policy of action it had shortcomings. The progressive figures in Congress were divided fairly equally among all parties whereas the conventional and time-honored basis for control of the important committee positions was party. Could he disregard party lines without inviting more trouble than the results might warrant? For example, Senator F. M. Simmons of North Carolina, the ranking Democratic member of the Senate Finance Committee, was definitely not a progressive. He had voted with Aldrich and Penrose on the tariff in 1909.<sup>64</sup>

Wilson thought that it was of primary importance to have a low tariff Democrat as chairman of the very important Finance Committee if he hoped to receive the cooperation of the Senate. From the wisdom of his experience with the realities of congressional politics Secretary Daniels counselled Wilson otherwise. He urged him to work with the party—conservatives and progressives alike—trying to lead them rather than to precipitate a struggle that might turn out disastrously.<sup>65</sup> This Wilson finally decided to do and it turned out to be a most fortunate and important decision. He withdrew his opposition to Simmons and in return the latter proved to be one of the strongest bulwarks for tariff reduction in the entire Congress. He fought steadily and skillfully, actually securing some reductions in the Senate greater than those incorporated by the House.<sup>66</sup> When the act became a *fait accompli* Wilson accorded Underwood and Simmons equal credit for the achievement which bore their joint names.

Underwood and the Democratic members of the Ways and Means Committee had been steeping themselves in tariff prob-

<sup>63</sup> R. S. Baker, *op. cit.*, p. 99.

<sup>64</sup> *Ibid.*, p. 100.

<sup>65</sup> *Ibid.*

<sup>66</sup> *Ibid.*

lems for more than two years. Contrary to the charges frequently made by Republican observers, the committee had devoted much study to the details of the several tariff schedules.<sup>67</sup> In its general outlines the new bill resembled the recommendations which had been incorporated in the Democratic bills of the preceding two years. There was a slight reduction in the rates on cotton goods. The rate on silks was reduced slightly with an even smaller reduction on silk fabrics. Only nominal reductions were made on pottery and earthen ware. Steel was not an issue in the new bill and the changes here were inconsequential. Two important changes were introduced.<sup>68</sup> The Underwood bills of 1911 and 1912 had provided for substantial though not drastic reductions in the schedules on wool and sugar only to have the bills vetoed by Taft. Due largely to the insistence of Mr. Wilson the Ways and Means Committee placed these two commodities on the free list.<sup>69</sup> In the case of sugar the new policy was softened somewhat by postponing the date on which it would go into effect until 1916.

Other important sections of the bill included the income tax provision implementing the newly ratified Sixteenth Amendment and a provision authorizing the President to negotiate reciprocal trade agreements subject to the ratification of Congress.<sup>70</sup> Neither of these sections received any special attention from Mr. Wilson. The new bill, therefore, was essentially the work of the Ways and Means Committee, more specifically of a few of its Democratic leaders, but with the general approval of Mr. Wilson and in those instances mentioned he had imposed his own personal views.

On April 7, 1913, Wilson convened Congress in extraordinary session and on the following day he broke a century-old

<sup>67</sup> Willis, *op. cit.*, pp. 12-40. Willis leaves little doubt that the Democratic committee approached the task of tariff construction in a thoroughly workmanlike and conscientious manner. Great care was taken to secure the relevant facts basic to such a law.

<sup>68</sup> Taussig, *op. cit.*, p. 425.

<sup>69</sup> Willis, *op. cit.*, p. 13.

<sup>70</sup> Act of 1913, Part II, Section IV.

precedent when he appeared in person to deliver a brief but impressive message recommending tariff reform. Mr. Underwood had already introduced the new tariff bill and it had been referred back to his committee.<sup>71</sup> Wilson followed day by day developments closely. He wrote numerous letters to Underwood and other important figures urging with all of the resources at his command their support of particular rates or schedules.<sup>72</sup> Some of the rates which he had insisted upon were opposed as too drastic by certain of his party leaders but he refused to retreat. Underwood supported his chief stalwartly and their combined strength was more than the others could resist. On April 21, after a tumultuous debate, the House Democrats in caucus voted to support the bill.<sup>73</sup> This clinched the matter as far as the House was concerned. On April 22, the Ways and Means Committee reported the bill.<sup>74</sup>

The bill was debated in the House from April 22 until May 8, when it passed virtually as written by a vote of 281 to 139 with five Democrats voting against passage.<sup>75</sup> The battle in the Senate was to be less one-sided. Numerically the Democratic party had an excess of seven votes but several Democrats were frankly protectionist. For example, the two Democratic Senators from Louisiana, Ransdell and Thornton, were unalterably opposed to the free sugar provision which was insisted upon by the President. Similar doubts existed regarding the support to be counted upon from the wool protectionists from the Far West.

Wilson had revealed his concern over the approaching battle in the Senate when, on the day following his special message, he visited the Capitol in person and conferred with the Senate Finance Committee.<sup>76</sup> When the bill was referred to the Senate

<sup>71</sup> H. R. 3321, 63rd Cong., 1st Sess.

<sup>72</sup> *Ibid.*, p. 111.

<sup>73</sup> Willis, *op. cit.*, p. 2.

<sup>74</sup> H. Report 5, 63rd Cong., 1st Sess., April 22, 1913.

<sup>75</sup> *Review of Reviews*, XLVIII, 131 (August, 1913).

<sup>76</sup> R. S. Baker, *op. cit.*, p. 103.

Finance Committee on May 9, the President tried unsuccessfully to get a Senate Democratic caucus to declare itself in favor.<sup>77</sup> In this first exploratory test of strength the opposition served notice that it did not intend to submit without a struggle. Lobbyists who had not been in evidence during the House stage now became active for the first time.<sup>78</sup> In a second test, this time on the issue of whether or not the Senate should hold open hearings on the bill, the administration forces took the honors, the vote being 41 to 36.<sup>79</sup> As the battle became more intense Wilson realized that unless he could do something to weaken the pressure groups seeking to emasculate this bill he was doomed to lose out in the end.

Once more he scored a coup d'état by doing the unexpected. On May 26 the press printed a dramatic appeal to public opinion throughout the entire country. Wilson decided to take this step without consulting either his cabinet or his colleagues in Congress.<sup>80</sup> In the statement which he gave to the press he called the lobby all-powerful and selfish and declared that it could be checked only by an informed and indignant public opinion. Wilson's strategy proved sound; although the pressure groups were by no means cowed by his attack their influence with many Senators was impaired.<sup>81</sup> Meanwhile he kept up his steady pressure upon the Senate by writing letters to particular individuals, going to "Capitol Hill, and holding frequent conferences at the White House. His efforts did not go unrewarded because on June 20, 1913, there took place " the first caucus of Democratic Senators that anyone can remember." <sup>82</sup> From that day until the 7th of July the Democrats of the Senate remained in caucus.

<sup>77</sup> *Ibid.*, p. 113.

<sup>78</sup> *Ibid.*, p. 116.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*, pp. 118-119; also *Review of Reviews*, XLVIII, 7 (July, 1913).

<sup>81</sup> *Ibid.*

<sup>82</sup> *New York Times*, June 21, 1913. (Quoted from R. S. Baker, *op. cit.*, p. 123.)



The victory was a clean-cut one for the President when, on July 7, 1913, the caucus declared the tariff bill to be a party measure and urged its undivided support by all Democratic senators.<sup>83</sup> Interestingly enough the person who exerted perhaps the greatest influence in obtaining this very important concession from the notoriously independent and individualistic Democratic bloc was Senator Simmons, the man whose loyalty and cooperation the President had doubted most. Four days later Senator Simmons reported the bill out of the Finance Committee.<sup>84</sup> On the whole, the bill that was reported out by the Senate Finance Committee was more drastic in its reductions than the House bill had been.<sup>85</sup>

During the two months of tiresome and for the most part fruitless debate that followed in the Senate some further slight changes were made. Again these were more often reductions than increases. Perhaps more important was the fact that the bill survived the entire ordeal without losing its essential unity. This is a record virtually unknown so far as the usual history of tariff bills is concerned.<sup>86</sup>

On September 9, 1913, the Senate voted, 44 to 37, to pass the tariff bill. Except for Senators Ransdell and Thornton of Louisiana every Democrat followed the injunction of the caucus. Two Republicans, LaFollette of Wisconsin and Poindexter

<sup>83</sup> *Ibid.*, July 3, 1913. (Quoted from R. S. Baker, *op. cit.*, p. 123.)

<sup>84</sup> Willis, *op. cit.*, p. 2; S. Report 80, 63rd Cong., 1st Sess., July 11, 1913.

<sup>85</sup> J. A. Russell, *Joseph Warren Fordney* (Boston, The Stratford Company, 1928), p. 150.

<sup>86</sup> The *Review of Reviews*, commenting upon this unusual spectacle of congressional self-restraint, observed: But the Senate caucus took no action whatsoever upon any part of the bill that results in a marked divergence of policy or practice between the two houses. This, let it be noted, is a very remarkable thing. So far as we are aware, it has never happened in the history of the country that a general tariff bill, going up from the House to the Senate, has sustained the ordeal of several weeks of consideration by the ruling party without undergoing any fundamental changes to be subsequently fought out in protracted sessions of the conferees of the two houses, XLVIII, 132 (August, 1913).

of Washington, also cast their votes in the affirmative.<sup>87</sup> Although the differences between the two houses were not fundamental two weeks were consumed by the conference committee. On October 2, 1913, the Senate adopted the conference report. The following day the House followed suit and President Wilson, in the presence of some fifty persons, including the members of the two committees concerned, signed the bill, the first important measure to be passed under his leadership.

The Underwood Tariff Act of 1913 was a signal victory for Mr. Wilson and for the Democratic party as a whole. When contrasted with the preceding tariff acts passed during the past half century the achievement is all the more striking. In view of the almost symbolic importance which may not unreasonably be attached to the bill it becomes all the more interesting to ascertain where credit for it should be placed. Tariff reduction had occupied the attention of the Democratic House for the two years preceding Wilson's accession to office. Even in the matter of specific schedules Wilson's ideas had already been the subject of discussion and action. Bills placing sugar and wool upon the free list—perhaps the most marked of Wilson's proposals—had been passed by the House before Wilson's election. It was not as an innovator of ideas that Wilson's part in the tariff struggle was notable, although his espousal of certain ideas was without doubt essential to their ultimate realization. The indispensable element which he did contribute was one of force, organization, and sustained pressure. Yet while according to him a full measure of credit for his part in the struggle it is important to acknowledge that even his splendid efforts would have gone largely unrealized had it not been for certain key figures in Congress. With all of his driving energy and insistent concentration on the tariff bill the President would have attained little without the loyal and intelligent cooperation and the not less important counsel of Underwood, Simmons, and others whose names did not make the headlines. The job was a truly joint one. To say that one was more important than

<sup>87</sup> *Review of Reviews*, XLVIII, 388 (October, 1913).

the other is vain for neither could have accomplished what it did without the other.

### THE FORDNEY-McCUMBER TARIFF ACT OF 1922

The Underwood Tariff Act of 1913 remained the backlog of American tariff policy throughout the Wilson administration notwithstanding a growing opposition from many sources. Actually, additional tariff legislation of some moment made its appearance during the intervening years. For example, the provision whereby sugar was to be placed on the free list in 1916 was removed by legislative act before its effective date ever arrived. A second event of the interim period was the creation of the Tariff Commission in 1916. Although the Democratic Congress had killed Taft's Tariff Board by refusing further appropriations, there had been a growing sentiment in favor of a "non-political body of experts" to aid in tariff making. What decided Wilson to act when he did is obscure, but on January 24, 1916, without previous communication with his party leaders, he asked Congress to create a bipartisan Tariff Commission with broad powers. The duties of the commission, he indicated, would be to investigate the administration and the fiscal and industrial effects of the tariff laws.<sup>88</sup> The Republicans within Congress congratulated the President for reversing his previous stand and taking a position which, they insisted, they had endorsed for some time and indicated that they intended to support him.<sup>89</sup> Among the members of the President's own party the reception was less cordial. Both Representative Kitchin, Ways and Means chairman, and Senator Underwood, who had fathered the tariff bill in 1913, opposed the recommendation. A bill creating the proposed commission, introduced by Representative Rainey, was later incorporated in the general

<sup>88</sup> *New York Times*, January 27, 1916, p. 4.

<sup>89</sup> In a second letter to Kitchin on January 26, the President referred to his request of two days before and explained, "I must frankly admit that I have changed my mind since I last spoke on that subject [the Tariff Commission]." See the *Congressional Record*, 66th Cong., 1st Sess., p. 10,529, July 6, 1916, for the two letters.

revenue bill. After no little controversy, during which President Wilson continued to exert constant pressure, the commission provision remained in the bill and became law in September, 1916.<sup>90</sup>

Despite the unceasing labors of the high tariff interests nothing resembling a frontal attack on the Underwood Act could make headway as long as the revenue committees of the two houses remained under Democratic control. With the elections of 1918 the Republicans gained control in both houses and the movement for tariff revision was immediately begun.<sup>91</sup> On December 22, 1920, the House passed the Fordney Emergency Tariff bill imposing duties on wheat, corn, potatoes, lemons, cattle, sheep, mutton, lambs, cotton, and wool, all of which had been on the free list under the 1913 Act. The bill also increased the rates on beans, peanuts, rice, and oils. When the bill reached the Senate further duties were imposed upon a wide variety of agricultural products and that body gave it a favorable vote in February, 1921. President Wilson's veto during the closing days of his administration still carried enough authority to withstand the attempted re-passage and the bill died.

Wilson's action postponed tariff revision only momentarily for the return of strong Republican majorities in both houses and the success of the Republican party in the presidential election in 1920 guaranteed speedy relief to the high protectionists. Actually, the sentiment in favor of greater protection was rather widespread. The aftermath of the war brought in its wake a severe decline in agricultural prices. High tariff rates on agricultural commodities might seem paradoxical when the crying need was for greater markets; nevertheless, such was the prevailing prescription and the amount of political pressure in its favor was considerable. A second and undoubtedly more potent

<sup>90</sup> *Journal of Political Economy*, XXIV, 402-403; 1014-1015 (1916); see also Taussig, *op. cit.*, p. 481.

<sup>91</sup> As a result of the elections of 1918 the 66th Congress showed: House of Representatives: 236 Republicans, 191 Democrats; Senate, 49 Republicans, 46 Democrats, 1 Progressive.

factor in favor of tariff revision upward found its inspiration in a new variation of an old and respected theme—that of the infant industries. Under the advantages of war time conditions numerous new industries had come into being and prospered. Now that the European economy was again regaining momentum American tariff walls seemed essential to protect these new arrivals.<sup>92</sup>

The advent of the new administration was not awaited by the tariff advocates. Under the direction of Chairman Fordney, the House Ways and Means Committee began, on January 6, 1921, hearings which continued until February 16, 1921. When it came to the committee sessions wherein the task of working out the several tariff schedules took place, the Democratic members of the Committee were excluded. For more than six months the Republican members of the Ways and Means Committee labored over the tedious details of a measure running into hundreds of pages and embracing thousands of items. On June 29, 1921, the bill was introduced by Mr. Fordney,<sup>93</sup> and immediately referred back to the Committee on Ways and Means from which it was reported July 6, 1921.<sup>94</sup>

The Fordney bill as reported to the House was a complete return to the principle of strong protection. It carried substantial increases in all schedules and placed back on the protective list those commodities which had been removed eight years before. Debate was kept under tight rein with the privilege of amendments severely restricted. After two weeks of debate the bill was approved on July 21, 1921, 288 to 127.

When the Fordney bill reached the Senate, the Finance Committee embarked upon a program of hearings which ran from July 25, 1921, to January 9, 1922. The bill reported out by the Senate Finance Committee on April 11, 1922, with more than two thousand amendments, carried rates which represented sub-

<sup>92</sup> Perhaps the most publicized example was that of the abortive dye embargo, allegedly sponsored by the DuPont interests.

<sup>93</sup> H. R. 7456, 67th Cong., 1st Sess.

<sup>94</sup> H. Report 248, 67th Cong., 1st Sess., July 6, 1921.

stantial increases over those in the House bill, but the bill was interesting chiefly on other grounds.<sup>95</sup> It contained a flexible tariff provision which had been absent from the House version. This provision, known as Section 315, attracted so much interest and was the center of so much controversy that its origin deserves careful scrutiny. Early in December, 1921, while the Senate Committee on Finance was still engaged in holding hearings, Dr. W. S. Culbertson, vice chairman of the Tariff Commission, sent President Harding a comprehensive memorandum suggesting that the President be authorized to proclaim added or penalty duties against countries which were discriminating against the United States.<sup>96</sup> President Harding conferred with Secretary of Commerce Hoover and other White House advisers and decided to urge upon Congress the wisdom of adopting this formula in lieu of the domestic valuation scheme already incorporated in the bill that had passed the House.<sup>97</sup>

On December 6, 1921, came the first public announcement of the impending change. In his annual message President Harding prepared the ground by declaring, "I hope a way will be found to make for flexibility and elasticity, so that rates may be adjusted to meet unusual and changing conditions which can not be accurately anticipated."<sup>98</sup> On the same day Senator Smoot presented amendments to the Fordney bill and among them was the flexible tariff provision.<sup>99</sup>

The House bill as amended was reported to the Senate on April 11, 1922, but debate did not get underway until April 20, when Senator McCumber made the introductory speech. He referred to the precedent-breaking action of the

<sup>95</sup> S. Report 595, 67th Cong., 2nd Sess., April 11, 1922.

<sup>96</sup> Wallace McClure, *A New American Commercial Policy* (New York, Columbia University Press, 1924), p. 731.

<sup>97</sup> John Day Larkin, *The President's Control of the Tariff* (Cambridge, Harvard University Press, 1936), p. 3.

<sup>98</sup> *Congressional Record*, 67th Cong., 2nd Sess., p. 37, December 6, 1922.

<sup>99</sup> *Ibid.*, p. 35.

House in basing all tariff rates on the American valuation of the commodities, acknowledging that there was much to be said for such a departure, but he concluded by saying that the Senate Finance Committee had decided to retain the traditional basis of foreign valuation. He confined his remarks to general observations and made no reference to the flexible tariff provision that had been inserted.

Senate debate on the Fordney bill was protracted. With a few brief let-ups it ran from April 20 to August 19, 1922. In order to give the Senate an opportunity to catch up with it, the House recessed from July 1 until August 15. On July 5, before many of its most significant sections had even been considered, the Republican leadership unsuccessfully attempted to invoke closure. The first point of major controversy was the dye embargo. This provision, allegedly sponsored by the DuPont interests, had gone down to defeat after a bitter battle in the House. When it came up in the Senate it was greeted with a wave of hostility that was not confined to Democrats. The dye embargo was rejected on July 15, 32 to 38 by a split party vote.

Among the many other points of controversy that which attracted most widespread attention was Section 315, the flexible tariff provision. In the general chorus of voices raising the issue of constitutionality and alleging dictatorship nearly all of the Democrats joined. This was regarded as much more of a party issue than had been the case in the dye embargo question. Though some Republicans were less than enthusiastic about giving the President this power, they were willing, with a few exceptions, to let it pass. The final vote on Section 315 was 36 to 20 with four Republicans voting nay. In the final vote of 48 to 25 approving the bill, Senator Borah was the only Republican voting nay, although Senators LaFollette and Norris, both of whom were absent, would have joined him had they been present.

As the bill went to conference those who had been disappointed in some of its provisions sought to remedy the situation. As was to be expected, the Democratic members were excluded

from the conference deliberations. Moreover, in the interests of harmony, Senator LaFollette, a ranking Republican member of the Senate Finance Committee was passed over in favor of Senator McLean. The six-man team went to work. In the report which it submitted on September 12 the dye embargo provision once more appeared notwithstanding the fact that it had been expressly rejected by record votes in both houses. After heated argument, the House voted to recommit the conference report by a vote of 177 to 130 with all but four Democrats supporting the motion along with 102 Republicans. A second conference report with the dye embargo deleted was approved by the House on September 15, the vote being 210 to 90. The Senate agreed to the report on September 19, 43 to 28.

#### THE HAWLEY-SMOOT TARIFF ACT OF 1930

Although it reflected a campaign pledge, the Hawley-Smoot Tariff Act of 1930 did not follow a change in party control in Congress or in the Presidency. Nor did it come about in response to some impelling economic emergency. While it is true that the final enactment of the new tariff law did not occur until almost a year after the stock market crash of November, 1929, there was no connection between the two events.

The act came during a Republican administration and, like all tariff acts, it was the handiwork of the majority party to the virtual exclusion of the minority members yet in a very real sense it was not a partisan tariff. Tariff was certainly not an issue in the election of 1928. The tariff planks of the Republican and Democratic parties offered the voter little to choose between. Both espoused protection in pleasingly ambiguous language and they could have been exchanged without doing major violence to either party. A more pressing problem was that of farm relief. Several times in the course of the campaign Mr. Hoover declared his intention if elected to call a special session of Congress to enact agricultural legislation. Shortly after his election he indicated that he intended to carry out this proposal. On December 5, 1928, the Ways and Means Commit-



tee announced that it would begin tariff hearings on January 7, 1929, in contemplation of the President's program. From the announcement it was apparent that the hearings would not be confined to the agriculture schedules.<sup>100</sup> The hearings began on January 7, 1929, and ran until February 25, 1929,<sup>101</sup> although supplementary briefs continued to be filed as late as April 18. In all, the Ways and Means Committee held hearings for forty-three days, and five evenings. This time, extensive though it was, did not begin to provide sufficient time for those who wished to present their case. More than eleven hundred persons sought a hearing and the committee was forced to resort to various forms of closure in order to dispose of the hordes of witnesses clamoring to appear. The most common recourse was that of imposing a limit of five minutes upon each witness, but even this was found to be too slow and in many cases limits of three and even two minutes were employed.<sup>102</sup> No systematic attempt was made to insure that all interests would be represented or that all points of view were given consideration. The committee confined its efforts to listening to those who assumed the initiative and presented themselves before it. If there were individuals or groups which either from lack of information or lack of financial resources were not able to plead their case that case in all likelihood went by default. In this sense the hearings in many instances partook of an *ex parte* character, and notwithstanding the impressive mass of evidence collected—10,891 pages in all—the entire proceedings were exceedingly one-sided.

Upon adjourning the hearings, the Democrats on the committee were excluded and the fifteen Republicans divided up into fifteen subcommittees, each subcommittee assuming responsibility for one of the fifteen schedules of the bill. In this way

100 E. E. Schattschneider, *Politics, Pressures, and the Tariff*, New York, Prentice-Hall, Inc., 1935), p. 25.

101 Hearings before the Ways and Means Committee, House of Representatives, on the Tariff Act of 1929. 70th Cong., 2nd Sess., January 7, 1929, to February 25, 1929. 18 vols., 10891 pages.

102 Schattschneider, *op. cit.*, pp. 52-59.

each Republican became chairman of a three-man subcommittee and it was in these subcommittees that the details of the several tariff schedules were worked out. The draft prepared by the fifteen subcommittees was, on the whole, moderate. It carried general increases in the agricultural rates and increases in some industrial rates yet, for the most part, it followed President Hoover's request for a "limited revision".

When the bill in its entirety came before the Republican Committee of Ways and Means caucus in May the flood gates of opposition were opened. Pressures hitherto kept under leash broke loose and in the following negotiations many additional increases won their way into the bill.<sup>103</sup> The measure introduced in the House on May 7, 1929, was in all respects much more extreme in its protective features than its predecessor.

While the Ways and Means Committee had been engaged in its labors, a special session of Congress had been called by President Hoover to provide relief for agriculture. In his message to the special session on April 15, 1920, the President included limited tariff revision among his recommendations for agricultural relief. He believed that rates on some agricultural products should be increased but hoped to avoid the dangers of a full scale tariff revision. Although he disapproved of reciprocity, he had faith in the efficacy of executive administration of broad flexible tariff provisions. What he wished from Congress at this time was a revision upward of agricultural schedules and a renewal of executive authority to make the necessary adjustments in other rates.<sup>104</sup>

Following the presidential message, the House of Representatives, operating under strict Republican control, took rather unusual precautions to insure expeditious action on the President's program. Farm relief being the sole item on the agenda

<sup>103</sup> Taussig, *op. cit.*, p. 495.

<sup>104</sup> Theodore G. Joslin, *Hoover Off the Record* (Garden City, New York, Doubleday, Doran and Company, Inc., 1935), pp. 30-31; Ray Lyman Wilbur and Arthur Mastick Hyde, *The Hoover Policies* (New York, Charles Scribner's Sons, 1937), pp. 182-184.

for the special session, the House leaders decided to limit House organization during the special session to those agencies necessary for legislating on the subject by postponing general organization until the first regular session. Accordingly, only two standing committees—Agriculture and Ways and Means—and three operating committees—Rules, Enrolled Bills, and Printing—were formally constituted at this time.<sup>105</sup>

On May 7, 1929, Representative Hawley of Oregon introduced the bill approved by the Republican caucus of the Ways and Means Committee.<sup>106</sup> The bill was referred to the entire Ways and Means Committee and immediately reported back to the House.<sup>107</sup> Debate opened on May 9 when Mr. Hawley moved the bill's consideration with time divided equally between himself and Mr. Garner. The pressure which had forced numerous increases during the preceding stages had not abated. In order to placate interests whose wishes had not been satisfied, the Ways and Means Committee was forced to offer many additional increases from the floor. Scores of conciliatory amendments were adopted before the House approved the Hawley bill by a vote of 264 to 147, on May 28, 1929. There was nothing resembling free debate in the House. Representative Robert L. Doughton's description of what took place is graphic and to the point:

In all 19 hours and 6 minutes were given for consideration of this bill which contained 434 pages. The fact of record is that only 82 lines out of 10681 contained in the bill were read under the five-minute rule; of the 183 sections contained in the bill only a fraction of one of them was read and considered. Majority tactics absolutely denied representation to the other members of the House in the framing of the Hawley-Smoot-Grundy bill.<sup>108</sup>

105 A. W. Macmahon, "The First Session of the 71st Congress", *American Political Science Review*, XXIV, 42 (1930).

106 H. R. 2667, 71st Cong., 1st Sess.

107 H. Report 7, 71st Cong., 1st Sess., May 7, 1929.

108 *Congressional Record*, 74th Cong., 1st Sess., p. 3046, March 6, 1935.

In the final vote twenty Democrats were recorded in favor of the bill while twelve Republicans joined the opposition. There had been little reference to the position of the President during the course of the three-week debate but as the bill emerged from the House it had gone considerably beyond the "limited revision" which he had recommended.

On June 7, 1929, the Senate Finance Committee announced public hearings to run from June 13 to June 25. Actually it was found necessary to prolong the hearings until July 18.<sup>109</sup> Instead of conducting the hearings as a single committee, four bipartisan subcommittees were set up. Under this procedure more than nine thousand additional pages of evidence were collected but once again there was little effort to insure adequate representation of all interests. When the time came for redrafting the bill the minority members of the committee were again excluded.<sup>110</sup> This time, however, the comparative harmony which had marked this stage of the House proceedings was lacking to a striking degree. Smoldering resentment among members from the agricultural sections of the country over what they interpreted to be a continued slight in favor of the industrial interests began to manifest itself during the committee deliberations. Many of the rate schedules ran athwart this agrarian-industrial schism and the numerous 6 to 5 votes among the Republican committeemen gave some indication of the stormy road that lay ahead when the bill would come before the Senate proper.<sup>111</sup>

<sup>109</sup> Hearings before a subcommittee of the Committee of Finance, U. S. Senate, 71st Cong., 1st Sess., on H. R. 2667. June 14 to July 18, 1929. 18 vols.

<sup>110</sup> Macmahon, *op. cit.*, p. 51.

<sup>111</sup> Strictly speaking the controversy was broader than one of agriculture versus industry. The basic question was whether the producers of raw materials—agricultural products among them—were to be accorded equality with the manufacturers in the matter of protection. This question has been recurrent in American tariff history. Although it was somewhat blurred by other issues, much of Taft's difficulty in 1909 was due to his desire that raw materials should be placed upon the free list. Through his efforts during the conference stage he was partially successful in gaining acceptance of this view.

Executive sessions of the Senate Finance Committee continued throughout the summer. Because the House had perfected only that part of its organization concerned with the tariff bill there was little for it to do until the upper chamber completed its action. Under a concurrent resolution agreed to June 18, 1929, Congress recessed on that day with the agreement that the Senate should reconvene on August 19 and the House on September 23.<sup>112</sup> As matters finally developed the bill moved so slowly even after it was reported to the Senate that the House though reconvening at the date agreed upon held only perfunctory biweekly sessions until early November when it suspended entirely for the remainder of the session which ended November 22.

After making 431 changes in the rates of the Hawley bill, the Finance Committee reported it back to the Senate on September 24, 1929.<sup>113</sup> On a strictly numerical basis the Senate committee had made more reductions than increases, 177 upward revisions being counterbalanced by 254 decreases.<sup>114</sup> Judged qualitatively, the effect of the Senate amendments is more difficult to appraise but whatever the final reckoning it is clear that the President's plea for a limited revision had received little more observance than had been true in the House.

Debate opened in the Senate on September 12, with Senator Simmons of North Carolina leading off for the opposition. From the tenor of his remarks as well as those of Senator Smoot who had charge of the bill for the Republican leadership it became clear that the ensuing struggle was to be both prolonged and bitter. As the debate developed the dissatisfaction that had troubled the executive sessions of the Finance Committee began to show itself with increasing frequency. An unofficial yet fully visible coalition between the agrarian Republicans and the Democrats lost little time in making known its objectives: higher rates on raw materials and lower rates on

112 S. Concurrent Resolution 16, 71st Cong., 1st Sess.

113 S. Report 37, 71st Cong., 1st Sess., September 4, 1929

114 Macmahon, *op. cit.*, p. 52.

industrial products. Between September 12 and the adjournment on November 22 the Senate dealt with only eleven of the fifteen schedules. Proceedings in the closing days of the session were at a stalemate due chiefly to the dilatory tactics of the dissidents. The final roll call before adjournment showed only eleven Senators present.

Throughout the course of the Senate debate little courtesy had been accorded the wishes of the President. On two different occasions, September 24 and October 31, Mr. Hoover urged enactment of a flexible tariff with broad discretion vested in the President and expressed his hope that the progress of the bill could be expedited. On the latter occasion he asked specifically that the bill be sent to conference within two weeks.

Congress reconvened on December 2, 1929, the Senate resuming where it had left off two weeks before. For more than three months the contest between the raw material interests and the industrial product supporters continued unabated with many an increase in individual duties being the price of final agreement. When the bill was finally approved on March 24, 1930, it carried 1253 amendments, most of them increases.<sup>115</sup> For the next twelve weeks the bill was shuttled back and forth between the conference committee and the two houses. Each house considered the bill three times before the multitudinous demands of the various contending interests were compromised sufficiently to gain the necessary majorities in both houses. In the almost interminable series of negotiations leading to the final settlement the hand of the President was very little in evidence although there is some indication that his influence thrown upon the side of the House conferees enabled them to come off better than would have otherwise been the case.<sup>116</sup> The conference report was agreed to in the House on June 13, 1930, 222 to 153. The same day the Senate also approved the report, 44 to 42. In both cases the final votes were fairly faithful reproductions of the party divisions although a few defections

<sup>115</sup> Taussig, *op. cit.*, p. 497.

<sup>116</sup> Macmahon, *op. cit.*, p. 920.

were recorded in each house, the motivations being sectional in virtually every case.

Presidential leadership was not conspicuous in the formulation of the Hawley-Smoot Tariff Act of 1930. Except for his insistence upon retention of the flexible provision, Mr. Hoover did not attempt to assume an important role in the activities leading to its ultimate realization. He confined himself to a few general pronouncements during the eighteen-month period that it monopolized the attention of the Congress.. Apparently he believed that his objectives could best be accomplished by subsequent utilization of the flexible provision, and there is little evidence that his efforts had much effect on the other details of the act.<sup>117</sup> Had he chosen to take a stronger line and utilize all of the weapons that a newly inaugurated President has at his command he could have undoubtedly left a greater imprint on the architectural structure that emerged. His decision in favor of a more passive role, except in a few isolated instances, deprived him of an opportunity to establish his leadership at the very outset of what proved to be an unhappy administration.

#### THE RECIPROCAL TRADE AGREEMENTS ACT OF 1934

The Reciprocal Trade Agreements Act of 1934, in reality merely an amendment to the Hawley-Smoot Act of 1930, was initially advanced as an administration measure and has continued to be identified as such. From the time early in 1934 when Secretary of State Hull defended the proposal before the committees of Congress through the successive periods in 1937, 1940, and 1943 when it has been up for extension, he has appeared as its chief defender and champion.

Whether Secretary Hull is entitled to credit for more than becoming champion of the trade agreements cause from 1934 on is a point upon which opinions differ. Moley indicates that the trade agreement idea was fashioned by Hugh Johnson and others as a mechanism for reconciling Roosevelt's belief in

<sup>117</sup> Joslin, *op. cit.*, p. 30; Wilbur and Hyde, *op. cit.*, p. 183.

limited protection with Hull's desire for free trade.<sup>118</sup> Actually, Mr. Roosevelt made his first public statement favoring reciprocal trade agreements in an address at Saint Paul, Minnesota, on April 18, 1932.<sup>119</sup> while the action of General Johnson to which Moley refers took place late the following August. At all events, when the proposal went before Congress it had the full support of both the President and the Secretary of State.

The Reciprocal Trade Agreements Act rests upon two principles which have found expression in American legislation several times. The first, reciprocity, was incorporated into the Republican inspired McKinley Act of 1890 and also into the Dingley Act of 1897.<sup>120</sup> The second, presidentially controlled flexible tariff adjustment, had been written into the Fordney-McCumber Act of 1922, and also included in the Hawley-Smoot Act of 1930.<sup>121</sup> President Hoover opposed reciprocal trade treaties because he believed that concessions from this country would further depress prices, particularly farm prices. He vetoed a bill providing for such treaties in the spring of 1932 on this ground.

On March 2, 1934, President Roosevelt sent to Congress a special message on commercial agreements with foreign nations. He referred to the great reduction in our foreign trade and linked the proposed trade agreement measure with his general recovery program. He emphasized that such trade agreements should be terminable within a period not to exceed three years. The same day, Representative Doughton of North Carolina introduced what was acknowledged to be an administration bill.<sup>122</sup> The Ways and Means Committee to which it was referred announced on May 5 that hearings on the bill

<sup>118</sup> Moley, *op. cit.*, pp. 48-52; 324-325.

<sup>119</sup> F. D. Roosevelt, *op. cit.*, I, 637-638.

<sup>120</sup> Hearings before the Committee on Finance, United States Senate, 73rd Cong., 1st Sess., on H. R. 8687, "An Act to Amend the Tariff Act of 1930", p. 9.

<sup>121</sup> *Ibid.*

<sup>122</sup> H. R. 8430, 73rd Cong., 2nd Sess.



would begin May 8. At the hearings, which lasted for a week, fourteen persons appeared and gave testimony. Six of the fourteen witnesses identified themselves as representatives of the administration; all of them supported the bill. The remaining eight witnesses represented various types of private interest prominent among which were the National Association of Manufacturers, the Chamber of Commerce of the United States, the United States Potters' Association, the People's Lobby, and the Home Market Club of Boston. All but two of these witnesses appeared in opposition to the bill in question although some of them endorsed in general terms the objectives of such legislation.

From the statements of Secretary Hull and his associates before the committee it was established that the actual drafting of the bill before the committee had been done by Assistant Secretary of State Francis B. Sayre. Secretary Hull stressed the necessity of lodging complete power with the executive, insisting that it would be utterly futile to have the Senate pass upon each proposed agreement. He reminded the committee that under the Dingley Act of 1897 the administration had negotiated ten commercial agreements with other countries only to have every one of them filibustered to death in the Senate.<sup>123</sup> Assistant Secretary Sayre sought to allay fears as to the constitutionality of the proposed delegation by pointing out that it had ample precedent. He recalled that under the McKinley Act of 1890 ten reciprocal trade agreements had been negotiated in 1891 and 1892.<sup>124</sup> At the close of the hearings the bill was considered by the entire Ways and Means Committee for two days during which only minor changes were made. An element of novelty—and one which the Democrats lost no opportunity to mention—was afforded by the failure of the majority party to bar the minority during the executive sessions of the committee. On March 16, 1934, Mr. Doughton introduced a second

<sup>123</sup> *Commercial and Financial Chronicle*, CXXXVIII, 1842 (March 17, 1934).

<sup>124</sup> *Ibid.*

bill incorporating the changes made in committee.<sup>125</sup> It was referred to the Ways and Means Committee which immediately reported it back to the House.<sup>126</sup> Debate opened on March 23 when the privileged bill was called up by the Chairman of the Ways and Means Committee under an agreement providing for twenty-two hours of debate divided equally between himself and the ranking minority member of the committee, Mr. Treadway.

In his introductory remarks Mr. Doughton deplored what he termed the Republican efforts to make a partisan issue of the tariff bill. He drew the attention of the House to the fact that for the first time in many years the minority had been permitted to participate in the formulation of a tariff bill. Moreover, said he, the bill had been brought to the floor under the general rules of the House without any gag and with full opportunity to offer amendments.<sup>127</sup> If Mr. Doughton's remarks were calculated to discourage partisan debate they were a dismal failure for the next six days were filled with acrimonious exchanges.

In the course of debate it was brought out by the minority that during the previous tariff discussion in 1929 the advisability of permitting the President to pass upon tariff rates had been thoroughly canvassed. To the discomfiture of the Democratic side of the House, attention was called to a joint state-

125 H. R. 8687, 73rd Cong., 2nd Sess.

126 H. Report 1000, 73rd Cong., 2nd Sess., March 17, 1934. The bill was reported out by a strict party vote—15 to 10. The report and the minority views which accompanied it were notable in the amount of information they revealed. The majority report outlined the decrease in American foreign trade in recent years. In a period of generally decreasing world trade, the United States had fared less well than its most important competitors. Figures for 1926-1933 for the leading countries of Latin America showed that their imports from the United States had steadily decreased whereas their imports from either Great Britain or Germany and sometimes both had increased. The trade agreement machinery of other countries was contrasted with that of the United States. A careful discussion of the question of constitutionality concluded with citation of precedents in the acts of 1890, 1897, 1922, and 1930.

The minority views were set forth in twenty-four specific reasons—legal and economic—why the proposed bill should not be approved.

127 *Congressional Record*, 73rd Cong., 2nd Sess., p. 5260, March 23, 1934.

ment issued on September 29, 1929, by eight Democratic members of the Senate Finance Committee. These men, F. M. Simmons, Pat Harrison, Wm. H. King, W. F. George, D. I. Walsh, A. W. Barkley, Elmer Thomas, and Tom Connally, placed themselves on public record as being unalterably opposed to the principle of permitting the President to pass upon tariff rates.<sup>128</sup> Furthermore, the minority read back into the *Congressional Record* excerpts from previous speeches delivered on the floor of the House in 1929 by J. N. Garner, R. L. Doughton, and H. L. Steagall in which each opposed giving the President such authority.<sup>129</sup>

After the minority had indulged in the luxury of having its say and proving to the complete satisfaction of anyone open to conviction that the position of the Democrats was hopelessly inconsistent, the House proceeded to the amendment process. In spite of the glowing reference to free opportunity to offer amendments which Mr. Doughton had made in his introduction, all amendments except those offered by the committee were rejected, whereupon the House approved the bill 274 to 111 on March 29, 1934.

The Senate Committee on Finance held hearings for four days from April 26 through May 1, during which sixty-five witnesses either appeared or filed briefs.<sup>130</sup> Administration representatives led by Secretary Hull covered the same ground which they had already traversed before the House committee. Mr. Hull urged that there should be no misunderstanding as to the nature or purpose of the measure which he was advocating. He said that it was not an extraordinary plan to deal with ordinary conditions nor an ordinary plan to deal with extraordinary conditions. He concluded, "Its support is only urged

<sup>128</sup> *Ibid.*, p. 5270.

<sup>129</sup> *Ibid.*, p. 5364, March 24, 1934.

<sup>130</sup> Hearings before the Committee on Finance, U. S. Senate, 73rd Cong., 2nd Sess., on H. R. 8687, "An Act to Amend the Tariff Act of 1930", April 26, 27, 30, May 1, 1934. 415 pages.

as an emergency measure to deal with a dangerous and threatening emergency situation. It should be acted upon in that light".<sup>131</sup>

Most of the representatives of business and industrial organizations who appeared before the committee expressed opposition to the bill. Prominent among this group were the National Association of Manufacturers, the American Tariff League, the American Mining Congress, and the National Wool Growers Association. Not all business was unfriendly, however. Some interesting exceptions were the National Automobile Chamber of Commerce, and the American Manufacturers Export Association, both of which approved.

At the close of the hearings the Senate Finance Committee carried over the bill less than a day and reported it to the Senate on May 2.<sup>132</sup> The Finance Committee made several amendments of a perfecting and clarifying nature. None of them affected the substance of the measure. Among the most interesting was that changing the language of the three-year time limitation. Another directed the President to allow hearings to industries affected by any such agreement before the agreement was concluded. Senator Harrison opened the discussion on May 17, Pointing out that forty-five countries had participated in negotiating one hundred fifty reciprocal trade agreements in 1933, Senator Harrison emphasized the importance of the bill as an essential step toward recovery. Continuing in this vein, he expressed his belief that there should be no politics in the discussion. The Republican minority led by Senator McNary was no less relentless in its attack than had been the case in the House. In a debate which ran for almost three weeks and filled 362 pages in the *Congressional Record* the Democrats were sore pressed to find justification for what amounted to a complete about-face on their part. The Republicans found no em-

<sup>131</sup> *Ibid.*, p. 5.

<sup>132</sup> S. Report 871, 73rd Cong., 2nd Sess., May 2, 1934.

barrassment in the fact that they too had reversed their field. In reply to a particularly bitter attack by Senator McNary, Mr. Harrison admitted the necessity of being inconsistent at times and defended his position on the dual ground of emergency and the fact that the Supreme Court had upheld the principle of the bill.

On June 1, the Democratic leaders succeeded in obtaining an agreement for a final vote on June 4, thus upsetting what threatened to become a Republican filibuster.

When the Senate had finished with the bill it carried few of the many amendments which had been offered from the floor, and its substance had not undergone great change. On June 4, 1934, it was approved by a vote of 57 to 33. The House considered the Senate amendments on June 6, and after debating them very briefly approved the bill as amended, 154 to 53 on a division vote.

## CHAPTER IV

### LABOR LEGISLATION FROM 1900 TO 1938

LEGISLATION directly relating to labor has taken many forms ranging from modifications of common law rules of liability in industrial accidents through regulation of industrial disputes to outright fixing of hours and pay rates. Here as in other fields debates, investigations, resolutions and bills have reflected congressional concern extending back for more than half a century. Congress discussed the possibility of national regulation as early as 1873. In 1882 a resolution adopted by the Senate directed its Committee on Education and Labor to study labor disputes, their causes, etc., and recommend measures to modify or remove these causes. In 1886 President Cleveland delivered the first labor message to Congress in the history of the country.<sup>1</sup> He proposed that the Federal Government set up a permanent board for voluntary arbitration of labor disputes. At this time his proposal was not acted upon but the Labor Act of 1888 was regarded by him as a partial fulfillment of his recommendation. The act of 1888 provided for the voluntary arbitration of railway labor disputes which affected interstate commerce and authorized the President to appoint fact-finding commissions to aid in the settlement of such disputes.

The Erdman Act of 1898, passed apparently without any participation or comment from President McKinley, superseded the act of 1888. It specifically prohibited "yellow dog" contracts and discriminatory discharges and provided permanent governmental machinery for mediation and arbitration. Its

<sup>1</sup> Allan Nevins, *Grover Cleveland* (New York, Dodd, Mead and Company, 1933), pp. 349-350; James D. Richardson, *Messages and Papers of the Presidents* (New York, Bureau of National Literature and Art, 1897), XI, 4979-4982.

application was limited to railway employees engaged in train service.<sup>2</sup>

### FIRST EMPLOYERS' LIABILITY ACT 1906

Employers' liability for industrial accidents was a regularly recurring topic in the annual messages of President Theodore Roosevelt from 1904 until 1908. In his 1902 message he urged Congress to enact an employers' liability law for the District of Columbia only, but from 1904 on he requested action embracing the entire country. His remarks in his December 5, 1905, message, the one immediately preceding the passage of the first liability act, indicate the nature and scope of the measure he had in mind:

In my annual Message to the Fifty-seventh Congress, at its second session. I recommended an Employers' Liability Law for the District of Columbia and in our navy yards. I renewed that recommendation in my Message to the Fifty-eighth Congress at its second session, and further suggested the appointment of a commission to make a comprehensive study of employers' liability, with a view to the enactment of a wise and constitutional law covering the subject, applicable to all industries within the scope of the Federal power. I hope that such a law will be prepared and enacted as speedily as possible.<sup>3</sup>

President Roosevelt's persistent support of employers' liability legislation in his annual messages to Congress was one factor in the eventual passage of the 1906 law. How much value to attribute to it is a matter of doubt. The generality of his recommendations was magnified by the fact that the hundred words or less usually devoted to employers' liability were buried in the depths of omnibus annual messages that frequently ran to more than thirty-five thousand words. His failure to be more explicit in his recommendation was not remarkable, for pres-

<sup>2</sup> See H. D. Wolf, *The Railway Labor Board* (Chicago, The University of Chicago Press, 1927), pp. 1-9; also T. R. Fisher, *Industrial Disputes and Federal Legislation* (New York, Columbia University Press, 1940), pp. 98-100; 155-159.

<sup>3</sup> *Congressional Record*, 59th Cong., 1st Sess., p. 94, December 5, 1905.

idential usage had not yet developed to the point where the details of prospective legislation were worked out in the White House, except in a few notable instances. Nevertheless, Theodore Roosevelt's share in the finished product was restricted to that of supplying momentum rather than of determining substance.

The principle of a national employers' liability law first appeared in Congress in 1902 when Senator Lodge of Massachusetts introduced a bill <sup>4</sup> imposing such liability upon all common carriers by railroad, in the District of Columbia, the Territories, and engaged in interstate commerce. During the same session a similar bill was introduced in the House by Representative Bates.<sup>5</sup> Neither of these bills was discussed; neither progressed beyond the reference stage. On February 3, 1904, Senator Penrose introduced a similar bill <sup>6</sup> which like its predecessor, S. 6451, was referred to the Judiciary Committee. On March 7, the bill was transferred to the Committee on Interstate Commerce where it died. In 1905 Senator Kean of New Jersey introduced a resolution authorizing the Senate Committee on Interstate Commerce to hold hearings on the interstate commerce law during the summer and somewhat reluctantly accepted an amendment which included employers' liability among the subjects to be investigated.<sup>7</sup> The resolution was passed and the committee held some hearings.

Following President Roosevelt's message on December 5, 1905, bills providing for employers' liability were introduced in the Senate by Daniels <sup>8</sup> and Penrose <sup>9</sup> and in the House by

<sup>4</sup> S. 6451, 57th Cong., 2nd Sess.

<sup>5</sup> H. R. 15990, 57th Cong., 2nd Sess.

<sup>6</sup> S. 4092, 58th Cong., 2nd Sess.

<sup>7</sup> *Congressional Record*, 58th Cong., 3rd Sess., pp. 3856-3857, March 2, 1905. The amendment was offered by Senator Martin of Virginia who stated that he had been trying for a long time to get the Committee on Interstate Commerce to consider employers' liability.

<sup>8</sup> S. 156, 59th Cong., 1st Sess.

<sup>9</sup> S. 1657, 59th Cong., 1st Sess.



Bates.<sup>10</sup> The two Senate bills were referred to the Committee on Interstate Commerce but no hearings were held and no report was made. The Bates bill in the House was referred to the Judiciary Committee which reported it favorably on March 15, 1906.<sup>11</sup> The bill was very brief, occupying less than half a column in the *Congressional Record*. At the end of a rather perfunctory debate it was passed without a record vote.

In the Senate the Bates bill was referred to the Committee on Interstate Commerce. This committee reported the bill favorably with a few minor amendments on May 18, 1906.<sup>12</sup> The bill was debated briefly on May 31, and June 1, 1906, and likewise passed without a record vote. On June 6, a motion to reconsider was debated and rejected, again without a record vote being taken. The House concurred with the Senate amendments. The bill was passed.

The original employers' liability law was enacted into law with little publicity. It excited little discussion either within Congress or without. The subject was definitely not one of paramount interest at this time. The first bills relating to the subject appeared in Congress at about the same time that President Roosevelt made his initial reference to the liability issue in his message of December, 1902. There is no evidence that Mr. Roosevelt was chiefly responsible for the enactment of the 1906 bill. His influence though significant was no more important than was that of the little group of congressional leaders whose efforts finally overcame the greatest obstacle to the enactment of the legislation—inertia and indifference.

## SECOND EMPLOYERS' LIABILITY ACT 1908

With the invalidation of the first Employers' Liability Act on January 6, 1908,<sup>13</sup> the task of writing a bill that would meet the requirements of the Supreme Court was faced by both the President and Congress. On January 31, 1908, President

10 H. R. 239, 59th Cong., 1st Sess.

11 H. Report 2335, 59th Cong., 1st Sess., March 15, 1906.

12 S. Report 3639, 59th Cong., 1st Sess., May 18, 1906.

13 *Howard v. Illinois Central Railroad Company*, 207 U. S. 463 (1908).

Roosevelt sent a special message to Congress in which he said: "As regards the employers' liability law, I advocate its immediate reenactment, limiting its scope so that it shall apply only to the class of cases as to which the Court says it can constitutionally apply, but strengthening its provisions within this scope."<sup>14</sup>

On February 13, new liability bills were introduced by Senator LaFollette and Representative Sterling.<sup>15</sup> The Sterling bill was referred to the House Judiciary Committee which devoted much time in an effort to write a bill that would stand up before the objections of the Court. As a result of the committee's labors, two additional bills<sup>16</sup> were introduced by Mr. Sterling before the majority of the committee was ready to report a bill for House consideration. On March 21, 1908, a White House statement listed an employers' liability law among the five measures upon which the President wanted action during the current session. Four days later Mr. Roosevelt sent a second special message to Congress on the same subject. These expressions from the President were all of a general nature with no attempt to suggest details. There is no indication that he took any personal part in the negotiations leading up to the final drafting of the bill as it was reported to the House on April 4, 1908. It was a conservative bill. Its provisions were restricted to railroad common carriers operating in interstate commerce, and it applied only to those employees of such railroads as were actually engaged in interstate commerce. These changes were calculated to overcome the deficiencies of the previous act which had applied to all employees of interstate carriers. After forty minutes of debate, the roll call vote on passage of 320 to 1 indicated that there was no serious opposition.

The LaFollette bill had been referred to the Senate Committee on Education and Labor. This was probably due to the fact

<sup>14</sup> *Congressional Record*, 60th Cong., 1st Sess., p. 1347, January 31, 1908.

<sup>15</sup> S. 5307 and H. R. 17038, 60th Cong., 1st Sess.

<sup>16</sup> H. R. 20194 and H. R. 20310, 60th Cong., 1st Sess.

that in previous sessions employers' liability bills had been referred to either the Judiciary Committee or the Committee on Interstate Commerce only to be buried and ignored. The Committee on Education and Labor had spent considerable time on the LaFollette bill and had modified it so greatly that when it emerged it bore almost no resemblance to its original form. When the Sterling bill arrived from the House it was considered without ever having been referred to any Senate committee. The original intention was to consider it briefly and then substitute the LaFollette bill. Due to a combination of factors, not the least of which was the mutual suspicion exhibited between the leaders of the Interstate Commerce and Education committees, the Senate refused to follow this procedure. Instead it accepted the House bill without a record vote after four hours of debate.

President Roosevelt's contribution to the passage of this law was significant. He it was who suggested the scope of the new legislation. He it was who by repeated reference to it, kept it constantly in the public mind. Indeed, the almost total lack of effective opposition to the measure may to a considerable degree be attributed to the President's educational campaign.

### DEPARTMENT OF LABOR 1913

As one of his last official acts President Taft signed the bill creating the Department of Labor. Oddly enough, he reserved the closing moments of his administration to approve a bill which he did not favor. His reasons for doing so are set forth in the brief statement which he made at the time of affixing his signature.

I sign this bill with considerable hesitation not because I dissent from the purpose of Congress to create a department of labor, but because I think that nine departments are enough for the proper administration of the Government and because I think that no new department ought to be created without a reorganization of all departments in the Government and a re-distribution of the bureaus between them. . . .

I forebear, however, to veto this bill, because my motive in doing so would be misunderstood. . . . <sup>17</sup>

Organized labor began its campaign for cabinet representation in 1868 when the National Labor Union passed a resolution for an executive department of labor.<sup>18</sup> The impetus behind the drive for a department was diverted or absorbed by the movement which successfully culminated in the creation in 1884 of the Bureau of Labor within the Department of the Interior. Chiefly through the efforts of the Knights of Labor, the Bureau of Labor was removed from the Department of the Interior in 1888 and transformed into an independent Department of Labor without executive status. Labor's failure to gain a cabinet seat at this time was due chiefly to congressional unwillingness to increase the number of executive departments. President Cleveland does not seem to have figured actively in the decision. He had shown a friendly interest in labor's quest for representation but apparently withheld specific recommendation at this time. Sentiment for full executive status continued strong among labor groups but for some years no modification occurred. In 1903, despite bitter opposition from the American Federation of Labor, President Roosevelt threw his support behind the proposal to create a Department of Commerce and Labor and once more labor's goal was postponed.

During the struggle over the 1903 bill the Democrats within Congress strongly opposed merging labor with commerce. By 1908 the issue had become more pointed. While the Republicans remained silent the Democratic platform of that year pledged the party to create a Department of Labor with a secretary of cabinet rank. Beginning in 1907 Representative Sulzer of New York annually introduced one or more bills creating such a department. These bills were regularly referred to the Committee on Labor but were never reported out. When the Democratic party gained control of the House in 1911, Mr. Sulzer's

<sup>17</sup> *Commercial and Financial Chronicle*, XCVI, 692 (March 8, 1913).

<sup>18</sup> John Lombardi, *Labor's Voice in the Cabinet* (New York, Columbia University Press, 1942), pp. 15-71. This book gives an excellent account

persistence was rewarded and the Committee on Labor reported his bill unanimously on April 20, 1912.<sup>19</sup>

The bill was called up for House consideration during call of committees of Calendar Wednesday, on July 17, 1912, and after considerable debate and amendment was approved without a record vote. There did not seem to be a concerted opposition. Most Republicans as well as the Democrats appeared to believe that the new department was desirable. The opposition that did occur may have reflected the administration attitude but it was not supported by the rank and file of the Republicans.

The Senate Committee on Education and Labor reported the Sulzer bill favorably with some minor amendments on July 26;<sup>20</sup> but Congress adjourned on August 26 without getting to the bill. In the next session, after several false starts and postponements the Senate suddenly passed the bill as amended on February 26, 1913. There was no debate, and no record vote. On February 27, the House concurred in the Senate amendments without debate or record vote. With the affixing of the President's signature referred to above, the bill became law.

### FIRST CHILD LABOR ACT 1916

The Child Labor Act that emerged from Congress in the late summer of 1916 was the product of a movement that had its initial beginnings more than ten years earlier. In 1906 when Senator Beveridge of Indiana introduced the first bill prohibiting interstate carriers from transporting the products of factories employing child labor, his action climaxed several years of steadily increasing concern with this problem.<sup>21</sup> The Prohibition party had included an anti-child labor clause in its platform as early as 1872. Twenty years later the Democratic platform carried a brief plank condemning the employment

19 H. Report 575, 62nd Cong., 2nd Sess., July 3, 1912.

20 S. Report 973, 62nd Cong., 2nd Sess., July 26, 1912.

21 John R. Commons, *History of Labor in the United States 1896-1932* (New York, The Macmillan Company, 1935), III, 404-409.

of children and advocating state legislative action. By 1899 twenty-eight states had some kind of child labor protection.

Beginning around the turn of the century child labor reform took a sudden spurt. The first child labor committee in the United States was organized in Alabama in 1901. With the organization of the National Child Labor Committee in 1904, the movement gained an intelligent and extremely active advocate. Theodore Roosevelt was a friendly supporter of the newly organized committee throughout his administration. He acknowledged the desirability of child labor legislation in his lengthy messages but made no special effort to secure a federal law.

Among the notable achievements of the National Child Labor Committee was the creation of the Children's Bureau in 1912.<sup>22</sup> President Taft though keenly aware of the need for protecting children in industry was not favorable to the establishment of a federal children's bureau because he disapproved the "disposition to unload everything on the federal government that the states ought to look after."<sup>23</sup> When the legislation was passed without his support, however, he approved the bill.

Early in 1912 the committee began publishing the Child Labor Bulletin and supplemented it by hundreds of pamphlets which were distributed where they would help to propagate a vigorous sentiment during the presidential campaign.

In 1912 brief child labor planks were included in the platforms of both the Republican and Progressive parties but the Democrats chose to say nothing on the subject. Their silence was probably dictated by Woodrow Wilson's opposition to federal child labor on constitutional grounds. Four years earlier he had expressed his belief that Congress did not have power to regulate child labor.<sup>24</sup>

<sup>22</sup> Raymond G. Fuller, *The Meaning of Child Labor* (Chicago, A. C. McClurg and Company, 1922), p. 127.

<sup>23</sup> Henry F. Pringle, *The Life and Times of William Howard Taft* (New York, Farrar and Rinehart, Inc., 1939), II, 622.

<sup>24</sup> Woodrow Wilson, *Constitutional Government* (New York, Columbia

During the first session of the Fifty-ninth Congress child labor bills had been introduced in both the House and the Senate.<sup>25</sup> In the same session several resolutions called for inquiries into existing conditions of child employment.<sup>26</sup> From that time until the passage of the Keating-Owen Act in 1916 the gradually increasing number of proposals at each succeeding session of Congress indicated the growing interest.

The National Child Labor Committee employed the Legislative Drafting Bureau of Columbia University to draft a bill which was introduced into the House by Representative Palmer on January 26, 1914.<sup>27</sup> The Palmer bill was referred to the Committee on Labor where it was to remain for more than a year. Hearings were held in February, March, and May of 1914.<sup>28</sup> All those interested were invited to appear. The only opposition was presented in behalf of the manufacturers of South Carolina.

The bill, somewhat amended, was reported out of committee on February 13, 1915.<sup>29</sup> After virtually no discussion, although several hours were consumed by successive roll calls on adjournment and for purposes of ascertaining the presence of a quorum, the House approved the measure by a vote of 233 to 43, on February 15, 1915. The bill was reported favorably by the Senate Committee on Interstate Commerce but was never debated in the Senate.<sup>30</sup>

The following session a new bill was introduced in the House.<sup>31</sup> A few changes had been made but the bill was essentially the same as that which had received House approval in the preceding session. By this time, however, the forces oppos-

25 S. 5469 and H. R. 17562, 59th Cong., 1st Sess.

26 H. Resolution 14, H. Resolution 153, H. Resolution 403, and H. Resolution 404, 59th Cong., 1st Sess.

27 H. R. 12292, 63rd Cong., 3rd Sess.

28 Summarized in H. Report 1400, 53rd Cong., 3rd Sess., February 13, 1913.

29 H. Report 1400, 63rd Cong., 3rd Sess., February 13, 1913.

30 S. Report 1050, 63rd Cong., 3rd Sess., March 1, 1913.

31 H. R. 8234, 64th Cong., 1st Sess.

ing the bill had succeeded in organizing their strength more effectively. The Committee on Labor again reported the bill favorably, stating that the only manufacturer opposition came from the cotton manufacturing sections of Virginia, North and South Carolina, and Alabama.<sup>32</sup> The bill was called up under Calendar Wednesday on January 26, 1916. Two hours of general debate were allotted, with a provision for amendment under the five minute rule. This time the House membership took full advantage of its opportunity and many amendments were added, although its original principle—that of prohibiting the shipment in interstate commerce of products produced by child labor—was retained. The bill was approved the following Wednesday, February 2, 1916, 337 to 46, with all but one of the negative votes coming from the southern states.<sup>33</sup>

The Senate Committee on Interstate Commerce held hearings on H. R. 8234 from February 15, until March 17, 1916.<sup>34</sup> The great majority of the 317 pages of testimony taken during these hearings came from those opposed to the bill. Except for the National Child Labor Committee and some few other child welfare organizations, all organized interest seemed to come from those seeking to block legislation.<sup>35</sup>

When the committee reported the House bill, on April 19, 1916, it recommended an amendment striking out the entire bill and substituting its own. Not until August 4, 1916, however, was the bill brought before the Senate. Had it not been for the intervention of President Wilson at a most strategic moment it seems certain that the child labor bill would have

<sup>32</sup> H. Report 46, 64th Cong., 1st Sess., January 7, 1916.

<sup>33</sup> Representative Parker of New Jersey was the only northern congressman to vote against the bill.

<sup>34</sup> Hearings before the Senate Committee on Interstate Commerce on H. R. 8234, 64th Cong., 1st Sess., 317 pp.

<sup>35</sup> It is interesting to note that even at this early date James A. Emery was engaged in pleading both the unconstitutionality and unwisdom of the pending bill—for the National Association of Manufacturers. His name and point of view were to become one of the most familiar landmarks before all committees dealing with any legislation of a social or economic nature during the ensuing quarter century.



gone over to the next session of Congress; this might have meant postponement until after the war.

The President had not committed himself on the child labor issue up to this time. In his annual messages of 1913, 1914, and 1915, he had urged legislative action upon several specific measures and had touched upon several others, but he had not mentioned child labor. A long story appearing in the *New York Times* on January 27, 1916, discussed the legislative program that the administration had settled upon for the current session of Congress.<sup>36</sup> In a brief but comprehensive discussion of the bills that the President was particularly interested in no reference was made to child labor. A similar though more detailed account in the same paper on March 14, listed the bills that the President had outlined as being most important, and again child labor legislation was omitted.<sup>37</sup> No doubt part of the explanation for this silence was attributable to his belief expressed some years before being elected President that under our Constitution the regulation of labor including child labor was in the domain of state and not of federal power.<sup>38</sup> Furthermore, under his theory of executive leadership in the legislative field, more was to be accomplished by concentrating upon only one measure at a time. So far Congress had been occupied by tariff, banking, and monopoly legislation. Whatever the explanation, if child labor was one of the items upon his legislative calendar he had skillfully concealed that fact for more than three years.

With the child labor bill on the Senate calendar the Democratic members of the Senate held a caucus on July 15 to set a tentative date for adjournment and to decide which measures should be acted upon before the session ended. The steering committee was directed to revise its program to make sure that the session would not have to run beyond August 20, and in order to give it some guidance the caucus specified those major bills upon which action must be taken. Among these the child

<sup>36</sup> *New York Times*, January 27, 1916, p. 5.

<sup>37</sup> *Ibid.*, March 14, 1916, p. 2.

<sup>38</sup> Wilson, *op. cit.*, pp. 178-178.

labor bill was conspicuous by its absence.<sup>39</sup> This meant that in all probability that bill would have to go over and take its chances the following December, a prospect of little appeal in view of the hazardous chance of any bill's success during the short session. The action of the Democratic caucus was due to the influence of the southern bloc, the source of the only concerted opposition to the child labor bill.

President Wilson suddenly sprang into action. On July 17, he made a personal visit to the Capitol to urge the Senate to pass the child labor bill. In a conference held in the President's room in the Senate wing, the President summoned the Vice President, the Majority Leader, and several other prominent party leaders in the Senate, and urged insistently that the child labor bill should be passed before adjournment. He referred to the current Democratic platform in support of his argument that it was politically expedient for the Democrats to pass the bill in the current session.<sup>40</sup> As a stimulant the President announced that he had decided to postpone receiving notification of his renomination in order to give his party a chance to push the bill through the Senate.<sup>41</sup> At a second meeting of the Democratic caucus on July 25, it was decided, over the protests of the southern bloc, and without a record vote, to pass the child labor bill at the present session.<sup>42</sup>

After numerous unsuccessful attempts by Republican members to bring the child labor bill to the floor the feat was finally accomplished on August 3, although no discussion took place until the following day. Senator Hardwick of Georgia led the opposition in the four-day debate that preceded final passage. He said that the bill was receiving its support from four important groups: sentimentalists, union labor, rival groups of manufacturers from different sections of the country, and those

<sup>39</sup> *New York Times*, July 16, 1916, p. 14.

<sup>40</sup> *Ibid.*, July 19, 1916, p. 6.

<sup>41</sup> *Ibid.*, July 22, 1916, p. 10.

<sup>42</sup> *Ibid.*, July 26, 1916, p. 3.

Republicans and Democrats who were competing for Progressive support. The debate that ensued was searching and comprehensive. On August 8, 1916, the Senate approved its own bill as an amendment to the House bill by a vote of 52 to 12, thus sending the two bills to conference. Of the twelve opposition votes all came from the south except the two cast by Senators Penrose and Oliver of Pennsylvania. The conference report was approved by both houses without record vote.<sup>43</sup>

The Child Labor Act was not an administration measure. To Congress must go the lion's share of the credit for its final passage, although the President's share was a vital one. The initial impulse, as well as the careful nurturing, that made possible a child labor act in 1916 were a part of what seems to be a familiar pattern in the case history of many important laws. It is essentially a legislative phenomenon and not an executive one. President Wilson's part in the final passage of this particular bill appears to have been motivated more by political considerations than was generally the case with him, although on this issue as upon several others his views underwent definite change while he was President.<sup>44</sup> The charge was made by many observers that his sudden interest and change of face on child labor was motivated chiefly by the growing importance of women's votes in the coming campaign. Mrs. O. H. P. Belmont's statement to the press on July 25 is perhaps typical. Pointing out that the President had suddenly deserted his position that child labor was a matter for state action only after the women of the country had fought the bill to its present strategic position, she charged that he was now climbing on the band wagon in order to gain the four million votes which would be cast by women in the west.<sup>45</sup> Whatever his reasons for supporting the bill, there is no doubt that his support, though belated, was fundamental to its success. Yet the common

<sup>43</sup> In the House on August 18, and in the Senate on August 21, 1916.

<sup>44</sup> For example, woman suffrage, direct legislation, commission regulation, etc. See chapters on Business and Tariff.

<sup>45</sup> *New York Times*, July 26, 1916, p. 3.

tendency to credit the President for the bill itself is far from the mark.

### SECOND CHILD LABOR ACT 1919

The invalidation of the First Child Labor Act was a bitter disappointment to those who had been confident that the commerce power of Congress was broad enough to embrace economic regulation of this character. This brought to an end, temporarily at least, a line of reasoning that ran back more than ten years. Congress was not to be so easily thwarted, however. Some were convinced that what Congress could not do by virtue of its commerce power, it could accomplish by using its taxing power. This approach to the child labor problem was almost as old as was the other. As early as 1907 a bill had been introduced in the House imposing taxes on the employers of child labor.<sup>46</sup> Others had been introduced in subsequent sessions, although the commerce bills had received the most attention.

By the time the Supreme Court handed down its decision in the first child labor case, President Wilson was so completely engrossed in the problems of the war that he had little time for purely domestic issues. Nothing would have been done to fill the gap caused by the decision had it been left up to administrative initiative. The Second Child Labor Act came into being in a strange way. During the Senate debate on the Revenue Act of 1918,<sup>47</sup> an omnibus bill fundamentally revising the entire tax system of the country, Senator Pomerene of Ohio proposed as an amendment a provision levying a ten per cent excise tax upon the net profits of persons employing child labor.<sup>48</sup> This amendment was the product of Senators Pomerene, Lenroot, and Kenyon. It will be noted that all of these men were Republicans, and that none of them were particularly close to the

<sup>46</sup> H. R. 24475, 59th Cong., 2nd Sess.

<sup>47</sup> H. R. 12863, 65th Cong., 2nd and 3rd Sess.

<sup>48</sup> *Congressional Record*, 65th Cong., 2nd Sess., p. 11560, November 15, 1918.

administration then in office. On December 18, after two hours of exceedingly sharp discussion, the Senate approved the amendment by a vote of 50 to 12. All of the adverse votes were cast by southern senators.

Inasmuch as the Revenue Act of 1918 had already been passed in the House, it went to conference after passing the Senate in its much amended form. When the conference report came before the House on January 31, 1919, Mr. Kitchin informed the members that the House conferees had concurred in the Senate child labor amendment.<sup>49</sup> During the discussion of the conference report Representative Venable of Mississippi devoted about fifteen minutes to the child labor amendment. This constituted the total and entire discussion in the House of Representatives on the Second Child Labor Act. The conference report was approved without a record vote. The conference report on the Revenue Act of 1918 (now 1919) was discussed for several hours in the Senate but the child labor amendment was not mentioned. Here, too, the report was approved without a record vote.

#### RAILWAY LABOR DISPUTES ACT OF 1926

Railroad labor legislation has been a subject of recurring congressional attention for well over half a century. The Act of 1888 and the Erdman Act of 1898 have already been mentioned. In 1913, the Erdman Act was replaced by the Newlands Act which was in reality but an amendment and extension of its predecessor. It too was confined to employees engaged in actual train service but it created a permanent three member Board of Mediation and Conciliation in place of the *ex officio* board which had functioned under the Erdman Act.<sup>50</sup>

The Newlands Act was motivated chiefly by the insistence upon the part of the brotherhoods that the Board of Mediation and Conciliation should be a separate and completely indepen-

<sup>49</sup> *Ibid.*, 57-3, p. 2452.

<sup>50</sup> Under the Erdman Act, either the chairman of the Interstate Commerce Commission or the Commissioner of Labor undertook this responsibility.

dent body.<sup>51</sup> This view was unsuccessfully opposed by Secretary of Labor Wilson who believed that the board should be placed within the Department of Labor. The act itself was the joint product of several collaborators which included the labor brotherhoods, the carriers, the congressional committees, the commissioners under the 1898 act and the National Civil Federation headed by Seth Low.<sup>52</sup>

When labor difficulties aggravated by the industrial acceleration of 1916 became acute, the machinery of the Newlands Act was no longer adequate. Labor had steadily increased its power during the past decade and it was now in a position to make effective its demand for an eight-hour day. When all efforts to reach an amicable settlement failed and a nation-wide strike scheduled for September 4, 1916, seemed certain, President Wilson went before a joint session of Congress and urged immediate passage of legislation establishing an eight-hour day for all employees engaged in the movement of trains.<sup>53</sup> The resulting Adamson Act of 1916 virtually scrapped the Newlands Act. Neither the brotherhoods nor the carriers were particularly enthusiastic about the new legislation and certainly both the President and Congress felt reluctant to take the step but there seemed no other means of avoiding a national crisis.<sup>54</sup>

At the end of the war when the comprehensive Transportation Act of 1920 was passed, Title III was devoted entirely to a further effort to establish sound principles of labor relationships in the railroad industry.

The labor provision of the Transportation Act of 1920 did not prove satisfactory however.<sup>55</sup> The Railway Labor Board

51 Robert E. Cushman, *The Independent Regulatory Commissions* (New York, Oxford University Press, 1941), p. 347.

52 *Ibid.*

53 Wolf, *op. cit.*, pp. 9-10; Edward Berman, *Labor Disputes and the President of the United States* (New York, Columbia University Press, 1924), pp. 106-124.

54 Fisher, *op. cit.*, p. 162.

55 See chapter on railroad legislation.

established under that act had been severely criticized during the consideration of the bill in Congress. It was, in fact, the product of the conference committee created to iron out the differences between the two houses, and although it had pleased no one completely it had been accepted in order to gain the advantages that the other sections of the bill were felt to contain. The dissatisfaction was shared by both the railroads themselves and their employees and there was general agreement between them that a new law was desirable.<sup>55a</sup> This recognition of need was reflected in the large number of bills that were introduced at every session looking toward amending the labor sections of the act. Part of these bills were inspired by the railroad brotherhoods; part came from the railroads themselves. Some were the product of individual members of Congress, acting upon their own initiative.<sup>56</sup>

In his annual message in December, 1923, President Coolidge endorsed railway labor legislation but refrained from suggesting details.

On February 28, 1924, identical bills were introduced by Representative Barkley of Kentucky and Senator Howell of Nebraska.<sup>57</sup> This bill had been prepared by a committee of railroad labor organizations. The statement of D. B. Robertson, president of the Brotherhood of Locomotive Firemen and Enginemen, during the hearings before the Senate Committee on Interstate Commerce, disclosed that the bill had been in

<sup>55a</sup> Earlier this had not been so. While some carriers were not satisfied with the Labor Board's operation under the 1920 act, the consensus seemed to be favorable. On November 29, 1924, following the annual meeting of the Association of Railway Executives, the carriers issued a statement opposing any change in the provisions of the Transportation Act. Their later switch appears to have been dictated by the fear that changes were inevitable and the wiser course was to join in determining the new terms. Wolf, *op. cit.*, p. 364.

<sup>56</sup> See Wolf, *op. cit.*, pp. 359-430, for a detailed account of the criticism leveled against the board and the events leading to the passage of the act of 1926.

<sup>57</sup> H. R. 7358 and S. 2646, 68th Cong., 1st Sess.

preparation for more than eighteen months.<sup>58</sup> At the suggestion of President Coolidge it had been discussed with his designated representative, the Secretary of Commerce, and also with the Secretary of Labor. After holding hearings for several days in March and April of 1924, the Senate Committee on Interstate Commerce reported the bill favorably only for it to die on the calendar.

In the House the bill's career was eventful although its ultimate fate was no better. Representative Barkley sought repeatedly to gain a hearing. Balked by an unfriendly committee, Barkley scored a temporary victory when the House voted to discharge the committee, but the House leadership employed parliamentary maneuvers to block further action during that session and the short session following. The unilateral character of the preparatory work on the bill made it almost inevitable that the railroads themselves would not find it acceptable.

Early in 1925 President Coolidge was instrumental in bringing the representatives of the railroad executives and railroad employees together. A committee of executives and labor was formed and discussions were carried on. This committee delegated to a subcommittee the task of drafting a bill.<sup>59</sup> Donald Richberg was engaged by the subcommittee to do the actual drafting although the members themselves were in a very real sense the authors for they were in almost constant session while its details were being worked out. The draft bill was submitted back to the original committee for final approval. This committee reported to the President that it now had a bill endorsed by executives representing eighty per cent of the railroad mileage of the country and by officers of twenty railroad labor organizations. President Coolidge recommended

<sup>58</sup> Hearings before the Senate Committee on Interstate Commerce on S. 2646, 68th Cong., 1st Sess.

<sup>59</sup> Those serving on the subcommittee were: David Robertson, president of the Brotherhood of Locomotive Firemen and Enginemen; Wm. N. Doak, vice president of the Brotherhood of Railroad Trainmen; Elisha Lee, vice-president of the Pennsylvania Railroad; and J. G. Walker, vice president of the New York Central Railroad.



passage of the bill in his message to Congress on December 8, 1925.

On January 8, 1926, identical bills were introduced in the Senate and House by the chairmen of the respective interstate commerce committees.<sup>60</sup> Both committees proceeded to hold hearings.<sup>61</sup> The committee questioning was impressive, reflecting comprehensive acquaintance with the questions involved. Particularly in the Senate committee was there a marked tendency to question whether the public interest had been sufficiently represented in the strictly two-party negotiations that had preceded the writing of the bill.

After closing its hearings the House committee made several changes in the bill before it and on February 17, 1926, Chairman Parker introduced a new bill embodying these changes.<sup>62</sup> The bill was reported back favorably on February 19, and became the basis of discussion in both the House and the Senate. Mr. Parker called up the bill under Calendar Wednesday on February 24, 1926. Two days of general debate were agreed upon although this time was later extended half a day. The single most discordant note came from Representative Nelson of Minnesota, a member of the committee, who charged that the bill had been accepted in toto as it came from the subcommittee of executives and employees. The bill passed the House on March 1, 1926, the vote being 381 to 13.<sup>63</sup>

The Senate Committee on Interstate Commerce had reported its own bill on February 26,<sup>64</sup> but no action had been taken on it when the House passed its bill. This bill was reported by

<sup>60</sup> S. 2306, and H. R. 7180, 69th Cong., 1st Sess.

<sup>61</sup> Hearings before the Senate Committee on Interstate Commerce on S. 2306, 69th Cong., 1st Sess., January 14 to February 10, 1926, 222 pages. Hearings before the House Committee on Interstate and Foreign Commerce on H. R. 7180, 69th Cong., 1st Sess., January 26 to February 10, 1926, 397 pages.

<sup>62</sup> H. R. 9463, 69th Cong., 1st Sess.

<sup>63</sup> *Congressional Record*, 69th Cong., 1st Sess., p. 4777, March 1, 1926.

<sup>64</sup> S. Report 222, 69th Cong., 1st Sess., February 26, 1926.

the Senate committee without amendment on April 16.<sup>65</sup> The intention was to substitute the Senate bill for that of the House when they came up for debate. The Senate had other ideas, however, for after five days of debate, during which there was considerable criticism of the failure to make more definite provisions for the protection of the public from high freight rates which might result from exorbitant wage increases, it passed the House bill in unamended form by a vote of 69 to 13.<sup>66</sup>

The Railway Labor Disputes Act of 1926 is unique. As Donald Richberg said to the House Committee on Interstate and Foreign Commerce, this was a case of Congress being asked to cooperate with the railroads and labor by establishing machinery to improve industrial relations for the common good of all. It was not a coercive bill but a cooperative one. It is literally true that the bill was written entirely outside any governmental agency or committee. The House committee made some changes but they were of a perfecting rather than of a substantive character, and a few changes were made during the amending process on the House floor. The Senate committee never had an opportunity to modify it because during the committee stage the Senate bill had received all of the attention. In both houses much emphasis was placed upon the importance of leaving the bill as it was. The argument ran that if the bill were approved in its present form both the carriers and labor would feel obligated to abide by it and make it work; whereas if Congress were to alter its provisions no such moral compulsion would exist.

President Coolidge was identified to a most unusual degree with the measure. Contrary to his ordinary custom of silence he had been vocal in support of such legislation since his elevation to the presidency. His first annual message in 1923 singled out this subject for special mention, and he followed words with action by using his good offices to bring together the representatives of the parties concerned in the working out of

<sup>65</sup> S. Report 606, 69th Cong., 1st Sess., April 16, 1926.

<sup>66</sup> *Congressional Record*, 69th Cong., 1st Sess., p. 9207, May 11, 1926.

the details of the bill. The President did not seem to be particularly interested in the substance. From the beginning he urged railroad labor legislation in general terms. At no time did he specify details. When the joint committee reported to him late in 1925 that it had reached an agreement he lost no time in accepting its recommendations. One may argue that this is not the proper function of the chief executive, that the obligation rests upon him to see such things from a more responsible point of view than merely that of mediating the demands of the two chief contenders. Yet the contribution of the President in this case was genuine and important. It is to be doubted whether such agreement would have been forthcoming had it not been for his efforts in bringing the interested parties together in the first place. The defeat of the Howell-Barkley bill during the preceding Congress was a fair warning to those who sought to bring about such legislation without gaining the cooperation of both parties.

### THE NORRIS-LA GUARDIA ACT OF 1932

In sharp contrast to the rather passive part played by Congress in the passage of the Railway Labor Disputes Act was its long period of sustained activity in the anti-injunction legislation that emerged in 1932. In equally sharp contrast were the presidential attitudes in the two bills. If President Coolidge had been a positive factor in the successful culmination of the former, President Hoover's negative influence was equally marked if not equally effective in the effort to block action on the latter.

The columns of the *Congressional Record* from 1894 on demonstrate a persistent legislative interest in the possibilities of limiting or outlawing the use of the injunction in labor disputes. Writing in 1930, Professors Frankfurter and Greene, after reviewing the long and for the most part futile struggle between Congress and the courts, down to the time of the Clayton Act, conclude: "If such continuous effort and travail in the evolution of a single measure reveal any deliberate pur-

pose, they justify the presumption that Congress was long conscious of abuses in issuing injunctions and that this legislation [the Clayton Act] embodied a solution."<sup>67</sup> When the Supreme Court emasculated the Clayton Act in 1921,<sup>68</sup> Congress once more set about the task of protecting labor from the indiscriminate use of this most potent weapon.

The preliminaries of the 1932 final began as early as 1922 when Representative Schall of Minnesota introduced a bill to amend the Clayton Act so as to exempt labor organizations from injunction proceedings.<sup>69</sup> The following year Senator Shipstead of Minnesota introduced a bill "to prevent abuses of judicial power in cases involving or growing out of labor disputes."<sup>70</sup> Similar bills were introduced at this session by Representative Thomas of Kentucky and Representative Wefald of Minnesota.<sup>71</sup> None of these bills progressed beyond the reference stage. They were, however, the beginning of what was to become a steady stream of similar bills during the ensuing ten years. During this early period the name of Senator Shipstead is the one most frequently recurring, although beginning in 1927 that of Representative LaGuardia begins to appear with increasing frequency in connection with anti-injunction bills. Senator Norris, as chairman of the subcommittee of the Senate Judiciary Committee, was instrumental in keeping the issue alive in the face of indifference or hostility on the part of the administration during the years preceding final enactment in 1932. By the time the Norris-LaGuardia bill came before Congress for debate in 1932 the idea of anti-injunction legislation in general had become quite familiar to all members and the merits of the particular bill then pending

<sup>67</sup> Felix Frankfurter and Nathan Greene, *The Labor Injunction* (New York, The Macmillan Company, 1936), p. 163.

<sup>68</sup> *Duplex Printing Press Company v. Deering*, 254 U. S. 443 (1921).

<sup>69</sup> H. R. 12622, 67th Cong., 2nd Sess.

<sup>70</sup> S. 2760, 68th Cong., 1st Sess.

<sup>71</sup> H. R. 3208 and H. R. 8663, 68th Cong., 1st Sess.

had already come in for considerable discussion during the five years that the subject had been actively before congressional committees. This chain of events bears so much upon the origin of the final bill that it will be traced in some detail.

On December 12, 1927, Senator Shipstead introduced S. 1482, a bill restricting the jurisdiction of equity courts to cases involving tangible and transferable property. This bill, a very brief one of less than one hundred words, had been drawn by Andrew Furuseth, President of the International Seamen's Union of America. It was referred to the Senate Judiciary Committee, a subcommittee of which, composed of Blaine of Wisconsin, Walsh of Montana, and Norris of Nebraska who served as chairman, proceeded to hold extensive hearings from February 8, 1928, until December 18, 1928.

Extended executive sessions of the subcommittee following the hearings convinced the membership that the proposed bill was inadequate so it called into consultation economists and attorneys who had made a special study of the injunction problem. Among those consulted were Felix Frankfurter, Herman Oliphant, Francis B. Sayre, E. E. Witte, and Donald R. Richberg.<sup>72</sup> From these consultations the subcommittee prepared a substitute bill and reported it to the full Judiciary Committee. There was considerable employer opposition to this new bill. In order to meet this opposition the committee referred the bill back to the subcommittee with instructions to hold further hearings. Additional hearings were held and the subcommittee once again reported its substitute bill back to its full committee. The bill reposed in committee for the remainder of that session and throughout the following session.

Senator Shipstead again introduced his bill (virtually identical to S. 1482) on December 9, 1929.<sup>73</sup> The process repeated that of two years before except that the subcommittee did not hold further open hearings. All interested parties were permitted to file written briefs to supplement their previous testi-

<sup>72</sup> Senate Report 163, 72nd Cong., 1st Sess., February 4, 1932.

<sup>73</sup> S. 2497, 71st Cong., 1st Sess.

mony. The subcommittee amended its substitute bill in some minor respects and reported it once more to the full committee, which in turn added several amendments, all of a minor nature. On the vote approving the bill seven members voted for and seven voted against with three members not voting. Thus the motion to make a favorable report was defeated.

At this stage the Judiciary Committee voted to refer the bill to the Attorney General for an opinion as to its constitutionality. After giving the matter consideration for some time the Attorney General declined to comply with the committee's request. This action was construed by some members of the committee to indicate that the President did not wish to see the bill come up for consideration. On June 20, 1930, the full committee voted to report the bill adversely to the Senate.<sup>74</sup> The bill died upon the Senate calendar when the Seventy-first Congress adjourned.

As the Seventy-second Congress opened Senator Norris introduced S. 935.<sup>75</sup> This was essentially the same as the substitute which the Judiciary Committee had reported adversely the previous year. Despite the demand for further hearings the Judiciary Committee decided against them, but permitted all interested persons to file written briefs before January 25, 1932. After additional days in executive session, the committee ordered a favorable report by a vote of 11 to 6. The bill was reported to the Senate on February 4, 1932.<sup>76</sup>

During the five years that the sponsors of the anti-injunction bill were struggling to get their bill reported favorably by the Judiciary Committee of the Senate the sentiment for such legislation was gaining momentum outside Congress. The Republican and Democratic platforms of 1928 both endorsed such legislation. Ex-President Taft stated in his speeches and

<sup>74</sup> S. Report 1060, 71st Cong., 2nd Sess., June 20, 1930.

<sup>75</sup> December 9, 1931. The same bill was introduced as H. R. 5315 by Representative LaGuardia.

<sup>76</sup> S. Report 163, 72nd Cong., 1st Sess., February 4, 1932. The Minority views were not reported until February 16.

writings that Congress had intended to provide such protection to labor in the Clayton Act of 1914 and certainly it should do so now. Early in January, 1931, the American Civil Liberties Union began a drive in support of the Norris-LaGuardia bill. It announced the formation of a National Committee on Labor Injunction to focus on Congress all existing support and all that could be marshaled. Among its four hundred members were such well-known names as Harry Emerson Fosdick, Rexford G. Tugwell, Joseph P. Chamberlain, John Dewey, and Arthur Garfield Hays.<sup>77</sup> At about this same time James W. Gerard, Chairman of the Committee on Industrial Disputes of the National Civic Federation, made public his report recommending remedial legislation on labor injunctions.

Against this background of events the Senate turned its attention to the Norris-LaGuardia bill in early February, 1932. In opening debate on February 23, Senator Norris took pains to make it clear that the administration had not lent its helping hand to the progress of the bill thus far:

This proposed legislation has not had the assistance of the present administration; but, on the other hand, it is fair to say that in general the opposition to this legislation has come from those who are recognized as being closely allied with the present administration.<sup>78</sup>

The Senate devoted itself assiduously to the bill. Attendance was unusually good and the number of well-informed analyses indicated that many members had given the subject no little thought. Some amendments, mostly of a minor perfecting nature, were accepted, but for the most part the membership seemed content to follow the wishes of the sponsors. Final action occurred on March 1, 1932, when the Senate approved the measure 75 to 5.

No House committee hearings on any anti-injunction bills had been held prior to 1932, but the Senate had not been the

<sup>77</sup> *New York Times*, January 5, 1931, p. 2.

<sup>78</sup> *Congressional Record*, 72nd Cong., 1st Sess., p. 4503, February 23, 1932.

sole center of activity. Representative LaGuardia had introduced his first anti-injunction bill in 1928 and he had not permitted a session of Congress to go by without attempting to secure a hearing. According to his own statement on the floor of the House, the subject had been before the Judiciary Committee every session for the past eight years. In 1931 Mr. LaGuardia joined forces with Senator Norris and they introduced identical bills as the Seventy-second Congress opened in December.<sup>79</sup> The House Committee on the Judiciary held brief hearings on February 25, 1932,<sup>80</sup> and reported the bill favorably on March 2, 1932.<sup>81</sup>

House debate, which began on March 8, was not spirited. It was evident that there was almost no partisan opposition. Mr. LaGuardia stated in his opening remarks that if it had not been for the friendly cooperation of Speaker Garner, Majority Floor Leader Rainey, and the Rules Committee, all Democrats, the bill would still be under academic discussion. Except for a highly emotional attack by Representative Beck, and one in a somewhat similar vein by Mr. Blanton, there were no opposing speeches. After several committee amendments were approved the House passed the bill 362 to 14. The House bill, although originally identical with the Senate bill, had undergone some committee amendment so it was necessary to send them both to conference. The differences between the two bills were not fundamental. In general the Senate version was the one which prevailed although both houses made concessions. The single most significant difference was the Senate provision that prohibited any federal court from granting mandatory injunctions compelling the performance of an act in any case involving or growing out of a labor dispute. The House bill had not included such provision and in the conference bill this clause was omitted. The other most important point of difference was that

<sup>79</sup> H. R. 5315 and S. 935, 72nd Cong., 1st Sess.

<sup>80</sup> Hearings of the House Judiciary Committee on H. R. 5315, 72nd Cong., 1st Sess.

<sup>81</sup> H. Report 669, 72nd Cong., 1st Sess., March 2, 1932.



pertaining to jury trial in contempt cases. The House bill provided for jury trial in criminal contempts only; the Senate, for jury trial in all contempt cases and this provision was not to be confined to contempts arising out of labor disputes. The conference report guaranteed jury trial in both civil and criminal contempts but confined it to cases arising out of labor disputes.

The conference report<sup>82</sup> was approved in the House on March 17, after less than ten minutes discussion, without record vote.<sup>83</sup> In the Senate the following day the discussion lasted perhaps half an hour and again the report was approved without a record vote.<sup>84</sup>

### THE NATIONAL LABOR RELATIONS ACT OF 1935

Few acts passed during the first administration of President Roosevelt are more closely linked in the public mind with the administration than is the National Labor Relations Act.<sup>85</sup> To the general public and even to the person who follows public affairs with some degree of care the Wagner Act, as it is commonly called, is thought of as one of the basic planks of the New Deal legislative platform. In mid-summer of 1935 when Congress was putting the finishing touches on the Wagner bill preparatory to sending it to the President for his signature, the wave of publicity emanating from Washington gave the impression that fully ninety-five per cent of the achievement came from and originated with the President.

The friendly attitude of President Roosevelt toward labor and its right to organize and bargain collectively was a fact well recognized from the beginning of his administration. His position was especially emphasized because it contrasted so sharply with that of his immediate predecessor. Moreover by 1935, it

<sup>82</sup> H. Report 821, 72nd Cong., 1st Sess., March 17, 1932.

<sup>83</sup> *Congressional Record*, 72nd Cong., 1st Sess., p. 6337, March 17, 1932.

<sup>84</sup> *Ibid.*, p. 6455.

<sup>85</sup> See E. E. Witte, *The Government in Labor Disputes* (New York, McGraw-Hill Book Company, Inc., 1932), pp. 273-289, for the background of the Wagner bills.

had become more or less habitual with the press and the public to think of the White House as the focal point of all activity, legislative or otherwise. These two factors supplied an element of plausibility to the myth that the National Labor Relations Act was the brain child and special care of the administration when, as a matter of fact, quite the contrary was true. It is not the intention here to argue that no credit is due the President for the enactment of the labor bill for such is by no means true. His part was not only definite but even indispensable. Without it the bill would probably have never survived. In the interest of accuracy, however, it does seem desirable to distinguish more carefully between what the President did and what he did not do in the preliminary movements that occupied the year preceding the final passage of the bill.

The collective bargaining provisions of the National Labor Relations Act were not new.<sup>86</sup> The right of labor to organize and bargain collectively which had received so much lip service during the early days of the National Industrial Recovery Act and which was to become the backbone of the Wagner Act had long been advocated by many students of industrial relations. As far back as 1888 Congress sought to promote the right of workers to bargain collectively. In the Railway Arbitration Act of that year the direct progenitor of the famous Section 7a was written into law. The labor provisions of the Transportation Act of 1920 likewise recognized the right of labor organizations to bargain for their members. The Railway Labor Act of 1926 went even further and sought to promote the organization of workers for such purposes. The majority rule provision that had been applied in the application of Section 7a of the National Industrial Recovery Act had long been applied in the administration of the 1926 act. The Supreme Court had added its bit to the evolutionary process when it held in the case of *Texas and New Orleans Railroad Company v. Brotherhood of Rail-*

<sup>86</sup> John R. Commons and John B. Andrews, *Principles of Labor Legislation* (New York, Harper and Brothers, 1936), 4th Revised Edition, pp. 419-424.

*way and Steamship Clerks* (1930)<sup>87</sup> that the attempt of an employer to impose a company union upon his employees constituted interference with their right to designate representatives for collective bargaining. Much of the language which appeared in Section 7a of the National Industrial Recovery Act had been lifted bodily from the declaration of policy in the Norris-LaGuardia Act.<sup>88</sup>

On March 1, 1934, Senator Wagner introduced a Labor Disputes bill<sup>89</sup> creating a permanent National Labor Board and guaranteeing to labor full rights to organize for purposes of bargaining. In a long story describing the details of the bill and reviewing the developments leading up to its introduction there was no mention of the President's attitude toward it.<sup>90</sup> The Senate Committee on Education and Labor held hearings from March 14, 1934 until April 9, 1934.<sup>91</sup> During his appearance before the committee in defense of his bill Senator Wagner stated that he alone was responsible for it.<sup>92</sup>

Throughout the three-week period during which the hearings were going on there was no mention either in the hearings or in the press about the position of the President. Secretary of Labor Perkins appeared before the committee to give her opinion of the bill. Her attitude was generally one of approval except for the provision giving the proposed board independent status. Most of her attention was directed to this section and she presented many reasons why the board should be placed in the Department of Labor. There was no indication whether the President shared her views in this matter. A further bit of

<sup>87</sup> 281 U. S. 548.

<sup>88</sup> See Lewis L. Lorwin and Arthur Wubnig, *Labor Relations Boards* (Washington, D. C., The Brookings Institution, 1935), pp. 231-263.

<sup>89</sup> S. 2926, 73rd Cong., 2nd Sess. The same bill was introduced in the House as H. R. 14105 by Mr. Connery.

<sup>90</sup> *New York Times*, March 2, 1934, p. 1.

<sup>91</sup> Hearings by the Senate Committee on Education and Labor, on S. 2926, 73rd Cong., 2nd Sess.

<sup>92</sup> *Ibid.*, p. 13.

evidence points to complete absence of administration support of the bill at this time. The great majority of witnesses appearing before the committee were hostile to any labor legislation at this session and particularly outspoken against the provisions of the Wagner bill. The provisions outlawing company unions and enumerating certain unfair labor practices were subjected to bitter denunciation. In the face of such concerted opposition the survival of the bill seemed remote unless some powerful advocates came to its defense. If the administration were truly behind the bill it seems strange that it chose to remain silent during this extremely critical period.

About ten days after the conclusion of hearings Senator Wagner visited the White House to discuss his proposal. Upon emerging the Senator said that some changes would be made but that the general principles would remain. Simultaneously it was announced the President was calling a conference of General Hugh S. Johnson, Donald Richberg, and Secretary Perkins, to discuss the bill.<sup>93</sup> Some days later a subsequent statement indicated that the discussions of this conference had resulted in a "completely redrafted bill". As it now stood the proposed labor board became an arbitration and mediation body, and the section prohibiting company unions had been entirely eliminated.<sup>94</sup> A month later nothing further had been accomplished. Additional conferences had been held between Senator Wagner and the President but the latter's attitude was not clear. On May 2, 1934, after another conference at the White House at which Frances Perkins and Harry Hopkins were also present, Senator Wagner announced that he would introduce a new bill only slightly different from the original.<sup>95</sup> It again would contain a prohibition against company unions. He refused to say flatly that the President favored his new bill, and no statement came from the White House.

<sup>93</sup> *New York Times*, April 18, 1934, p. 5.

<sup>94</sup> *Ibid.*, April 24, 1934, p. 5.

<sup>95</sup> *Ibid.*, May 3, 1934, p. 2.

After two weeks of silence an officially inspired story summarized the legislation that the President deemed advisable before Congress adjourned. Among the administration proposals was listed the Wagner bill with the proviso that the board was to be placed within the Department of Labor.<sup>96</sup> The President was not willing at this time, however, to take publicly a definite position in support of the bill. His off-the-record statement during his press conference on May 25, 1934, discloses this reluctance but does not explain the reasons for it. In the course of discussing the present situation confronting labor the following colloquy took place:

Q. You still need legislation of the type of the Wagner bill dealing with this?

The President: It would be very helpful. There is no question about that. It would be very helpful, because it would clarify administrative procedure and at the same time would create methods that were perfectly clear under the law . . .

Q. Is it fair to assume, then that you want this legislation this session?

The President: I would like to have it very much. I think it would be helpful. I think you had better put this off the record.<sup>97</sup>

The President did not translate his enthusiasm into action, nor did he permit himself to be quoted as definitely favoring labor legislation. Meantime, the Senate Committee on Education and Labor had reported out its labor bill. Although it bore the number of the original Wagner bill, it in no way resembled it. Limitations upon employees were so severe as to defeat the purposes of the original bill, according to Senator Wagner's point of view. The bill was reported, however, with the support of General Johnson and the statement that it had been endorsed by the President.<sup>98</sup> Indecision seemed to dominate the adminis-

<sup>96</sup> *Ibid.*, May 18, 1934, p. 1.

<sup>97</sup> Franklin D. Roosevelt, *Public Papers and Addresses of Franklin Delano Roosevelt* (New York, Random House, 1938-1941), III, 261.

<sup>98</sup> *New York Times*, May 25, 1934, p. 3.

tration for the next two weeks. For several days the press expressed uncertainty as to what the President's attitude really was. He was apparently undecided whether he should urge passage of even the diluted measure which the Senate committee had reported. There was much sentiment for adjournment of Congress. Should he urge action on the labor bill at this session, adjournment would be postponed indefinitely.

On June 12, at a White House conference there was discussion of a possible resolution which would empower the President to supervise elections and encourage collective bargaining pending passage of more permanent legislation.<sup>99</sup> This resolution was administratively inspired. Sent by the President informally to leaders of Congress on June 13, it was introduced formally on June 15, and approved by both houses on the following day.<sup>100</sup> The resolution was "to effectuate the policy of the National Industrial Recovery Act." It empowered the President to establish a board or boards to investigate issues arising out of Section 7a. The boards were authorized to hold elections to determine representatives for collective bargaining, etc.

Not until this resolution appeared on the floor of the Senate did Senator Wagner publicly support it. His behind-the-scenes fight for his own bill had for the moment bogged down so he reluctantly announced his support of the resolution because it was "backed by the wisdom and judgment of the President of the United States".<sup>101</sup> He did not fail to add that he still thought that his bill should have been passed. With the passage of this stop-gap resolution Congress adjourned and the troublesome issue of labor legislation was postponed. Its failure to materialize during this session was due at least in part to the ambiguous attitude of the administration, motivated no doubt by uncertainty on the part of the President as to just what kind of law would be most advisable.

<sup>99</sup> *Ibid.*, June 13, 1934, p. 1.

<sup>100</sup> Public Resolution No. 44, 73rd Cong., 2nd Sess.

<sup>101</sup> *New York Times*, June 17, 1934, p. 1.

The fall and winter of 1934 were filled with labor disputes. Under authority of the resolution the President had established several boards to handle the problems that were rapidly accumulating. Among these were the first National Labor Relations Board, the Steel Labor Relations Board, the National Bituminous Coal Labor Board, the Petroleum Policy Board, the National Longshoremen's Labor Board, the Textile Labor Relations Board, the Auto Labor Board, and the Newspaper Industrial Board. In spite of all this experience, or perhaps because of it, the President had reached no more definite position as to what kind of legislation he wanted by the time Congress again convened. In a long, informative story on February 15, 1935, Louis Stark, the *New York Times* labor correspondent, stated that Senator Wagner was going to reintroduce his bill outlawing company unions without the administration support that he had expected.<sup>102</sup> The story went on to point out that labor regarded Public Resolution No. 44 as a sop which bore no relation to the company union issue and therefore completely unsatisfactory. Senator Wagner's bill also aimed to clarify the jurisdiction of the labor board which it provided for. This was to forestall any repetition of the situation of recent experience where the President had written the present Labor Board directing it to give up jurisdiction in the Dean Jennings case because the Newspaper Industrial Board was handling it. It was clear that the President was not ready at this time to endorse a bill that was so specific in its provisions and so definite in its policy.

When the Wagner bill made its appearance in the Senate, its provisions readily indicated the differences between the views of the Senator and the President. In an editorial the *New York Times* pointed out that the Wagner bill differed in three important respects from the principles approved by the President in his recent comments on the work of the Automobile Labor Board.<sup>103</sup> Where the Wagner bill provided that the majority

<sup>102</sup> *Ibid.*, February 15, 1935, p. 1.

<sup>103</sup> *Ibid.*, February 22, 1935, p. 20.

should be the exclusive bargaining agent for all employees, the President had expressed approval of the principle of proportional representation. Where the Wagner bill would outlaw all company unions the President would not. Where the Wagner bill provided for an independent agency to administer the labor act the President favored a board within the Department of Labor. From this the independent character of Senator Wagner's efforts cannot be doubted.

The Senate Committee on Education and Labor again held comprehensive hearings on the Wagner bill.<sup>104</sup> During the more than two weeks of hearings many of the witnesses who had appeared at the previous hearings went over much of the same ground that had already been covered. Secretary Perkins again urged the wisdom of placing the board within the Department of Labor. This testimony was countered by that of the then chairman of the National Labor Relations Board, Francis Biddle, and the former chairman, Lloyd K. Garrison, both of whom urged that the board be independent.<sup>105</sup>

The committee devoted almost a month to executive sessions on the bill and reported it out on May 2 with a large number of amendments none of which changed the fundamental sections upon which Senator Wagner placed so much store.<sup>106</sup> The Senate got around to consideration of the bill on May 15, 1935. In presenting the measure Senator Wagner made a lengthy speech on the need for it; he also argued at length in favor of its constitutionality. No other systematic speech was made on the bill. Senator Tydings attempted to gain acceptance of an amendment prohibiting anyone from coercing employees to join a union. After considerable discussion during which Senator Wagner expressed strong opposition to it the amendment was rejected 50 to 21. After adopting some thirty committee perfecting amendments the bill was approved 63 to 12, the vote

<sup>104</sup> Hearings by the Senate Committee on Education and Labor on S. 1958, March 11 to April 2, 1935, 74th Cong., 1st Sess., 890 pages.

<sup>105</sup> *Ibid.*, p. 85.

<sup>106</sup> *Ibid.*, p. 131.



cutting across party lines. The bill had been presented to the Senate and debated without the position of the President having been mentioned. The *New York Times* story recounting the passage of the bill through the Senate said, "Although President Roosevelt has not declared himself directly on the Wagner bill, its sponsors say he will sign it after passage by the House, which they freely predict."<sup>107</sup>

When the Wagner bill went to the House and was referred to the Committee on Labor, much work had already been done by that committee. Representative Connery had introduced the Wagner bill into the House at the same time that it had been introduced in the Senate by its author. This bill<sup>108</sup> had been the basis of hearings held by the House Committee on Labor.<sup>109</sup> A new bill,<sup>110</sup> which was an amended version of the first, had been favorably reported out, and was on the House calendar when the Senate bill arrived.<sup>111</sup> In order to save time the House committee also reported out the Senate bill with five amendments, the most important of which placed the board in the Department of Labor.<sup>112</sup>

Immediately after the bill had passed the Senate the President called a conference of House leaders. The uncertainty surrounding his attitude was still reflected in the news dispatch covering this conference. Of the President it said, "He declined to state his position on the measure, although it has been regarded as 'one of the major parts in the administration's legislative program'."<sup>113</sup> In this atmosphere of rumors and indecision the bill was reported out. After another conference

<sup>107</sup> *New York Times*, May 17, 1935, p. 1.

<sup>108</sup> H. R. 6288, 74th Cong., 1st Sess.

<sup>109</sup> Hearings, House Committee on Labor, 74th Cong., 1st Sess., March 13 to April 4, 1935, 367 pages.

<sup>110</sup> H. R. 7978, 74th Cong., 1st Sess.

<sup>111</sup> H. Report 972, 74th Cong., 1st Sess., May 21, 1935.

<sup>112</sup> H. Report 1147, 74th Cong., 1st Sess., June 10, 1935.

<sup>113</sup> *New York Times*, May 18, 1935, p. 30.

with the President it was clear that the only obstacle in the path of the bill was the absence of his endorsement. Chairman Connery left the White House saying he was convinced that the President strongly favored the bill, but he could cite no concrete evidence to support his conviction.<sup>114</sup> Within less than a week, however, the atmosphere began to clear. The *New York Times* of May 25, 1935, carried an account stating: "The first intimation that Mr. Roosevelt finally had been won over to the Wagner bill, which would establish an independent labor board, provide for majority rule in elections for collective bargaining spokesmen and banish employer dominated labor organizations, came from Mr. Green after a White House conference. It was verified later by the President." Here for the first time was an unequivocal endorsement by the administration of the Wagner bill which had been fighting its own battles for almost eighteen months.

Whether the President would have continued to favor the Wagner bill had not other events intervened is problematical. Perhaps his decision of May 24 was prescient. At any rate, the invalidation of the National Industrial Recovery Act on May 27<sup>115</sup> made the labor disputes bill more acceptable to him. After numerous conferences with advisers in Congress and among his administrative chiefs, Mr. Roosevelt, on June 4, announced his plan to fill the void created by the decision.<sup>116</sup> Prominent among his recommendations was the urgent request for favorable action on the Wagner bill.

Subsequent accounts confirmed the fact that the President was now behind the Wagner bill, but added some confusion by disclosing that he also endorsed several amendments offered by Chairman Connery though these amendments were at variance with the bill as it had passed the Senate.<sup>117</sup> The bill which had been recommitted to the House committee was reported out a

<sup>114</sup> *Ibid.*, May 22, 1935, p. 2.

<sup>115</sup> *Schechter Poultry Corporation v. United States*, 295 U. S. 495 (1935).

<sup>116</sup> *New York Times*, June 5, 1935, p. 1.

<sup>117</sup> *Ibid.*, June 6, 1935, p. 12.

second time on June 10.<sup>118</sup> After some eight hours consideration during which the House refused to place the board under the Department of Labor even though Mr. Connery intimated that such was the President's desire, the bill was approved on June 19 without record vote. In conference the Senate version prevailed in almost every instance so that the bill which became law was not greatly different from that which Senator Wagner had introduced six months before. Both houses approved the conference report without debate and without record vote on June 27, 1935.<sup>119</sup>

The preceding account leaves little doubt that the burden of driving the Wagner Act to fruition fell elsewhere than upon the administration. Yet the myth of presidential leadership was so strong that the passage of the bill was heralded as another accomplishment of the administration's "must" program. The very newspapers which carried almost daily stories detailing the wavering position and contradictory demeanor of the President on this bill persisted in dubbing the National Labor Relations Act an administration bill when the law became a *fait accompli*.<sup>120</sup>

### THE FAIR LABOR STANDARDS ACT OF 1938

The attention of Congress was directed to the subject of limiting hours of labor early in 1933 before the New Deal took

118 H. Report 1147, 74th Cong., 1st Sess., June 10, 1935.

119 H. Report 1371, 74th Cong., 1st Sess., June 26, 1935.

120 Professor Moley has an interesting paragraph which seems to bear out what this study has found. After stating that early in January 1935 President Roosevelt had told him of his legislative program and that labor was not included he continues:

"Senator Wagner's Labor-Relations bill, which the President had no intention of supporting in January, developed unforeseen strength in Congress. As spring came on, the President faced the necessity of deciding whether he would accept it. By early June, partly because he needed the influence and votes of Wagner on so many pieces of legislation, and partly because of the invalidation of the NIRA, he flung his arms open and suddenly embraced the Wagner bill—whose palpable one-sidedness could have been eliminated then and there." Moley, *op. cit.*, p. 304.

office, when bills were introduced by Senator Black of Alabama and Representative Connery of Massachusetts.<sup>121</sup> This was four years before President Roosevelt sent his message to Congress advocating such legislation. Both houses held hearings on these bills.<sup>122</sup>

No reports were made on either bill but on February 17, 1933, Senator Black devoted about an hour to the discussion of his bill before the Senate. Except for this, the subject was not discussed on the floor of either house at this session. During the special session called by President Roosevelt immediately following his inauguration, identical bills were introduced by Senator Black and Mr. Connery.<sup>123</sup> These bills together with various proposals by the Secretary of Labor were made the subject of extended hearings in the House.<sup>124</sup>

In 1933, also, Representative Cannon of Wisconsin introduced a bill providing a minimum wage for workers on products shipped in interstate commerce.<sup>125</sup> It will be recalled that the pressure for wage-hour legislation had been an important factor in persuading President Roosevelt to support the omnibus National Industrial Recovery bill in 1933. The following year Representative Connery introduced a new bill regulating hours of labor only to have it reported out and die on the calendar.<sup>126</sup> This bill, likewise, was the subject of extensive hearings.<sup>127</sup> A bill of similar import by Representative Crosser

121 S. 5267 and H. R. 14105, 72nd Cong., 2nd Sess.

122 Hearings of the House Committee on Labor on H. R. 14105, 72nd Cong., 2nd Sess., January 18-30, 1933, 262 pages. Hearings of the subcommittee of Senate Committee on Judiciary on S. 5267, 72nd Cong., 2nd Sess., January 5, February 11, 1933, 641 pages.

123 S. 158 and H. R. 4557, 73rd Cong., 1st Sess.

124 Hearings before the House Committee on Labor on S. 158 and H. R. 4557, and proposals offered by the Secretary of Labor, April 25 to May 5, 1933, 991 pages.

125 H. R. 5332, 73rd Cong., 1st Sess.

126 H. R. 8492, 73rd Cong., 2nd Sess.; H. Report 889, 73rd Cong., 2nd Sess., March 7, 1934.

127 Hearings of House Committee on Labor on H. R. 7202; H. R. 4116,

of Ohio met the same fate.<sup>128</sup> In 1935 Senator Black reintroduced his Thirty Hour Week bill and again a subcommittee of the Senate Judiciary Committee held hearings.<sup>129</sup> The bill was reported favorably.<sup>130</sup> On April 8, 1935, Senator Black attempted to gain Senate consideration. Both the majority leader, Senator Robinson, and Senator Couzens urged him to withdraw his request, arguing that this was not an opportune time inasmuch as hearings were in progress on the extension of the National Industrial Recovery Act. Senator Black declined to withdraw his motion and it was defeated 52 to 21. This ended the matter for the session.

So far the activity on labor standards had been exclusively legislative. On the initiative of individual members of both houses numerous bills had been introduced, five different series of hearings had been held, and more than two thousand eight hundred pages of testimony and evidence had been accumulated. Two attempts, both unsuccessful, had been made to gain general consideration on the floor. This was the background upon which President Roosevelt took up cudgels in support of a national law regulating hours and wages.

Mr. Roosevelt had been interested in labor standards for a long time before he sent his first message to Congress on the subject. While Governor of New York he had been instrumental in obtaining industrial legislation. He had insisted that labor standards should be included in the National Industrial Recovery Act and upon its invalidation he had deplored their abandonment. He was partly responsible for the plank in the Democratic platform for 1936, urging national action on wages and hours and advocating a constitutional amendment to that end.

128 H. R. 7430, 73rd Cong., 2nd Sess.; H. Report 1763, 73rd Cong., 2nd Sess., May 24, 1934.

129 Hearings before the subcommittee of the Senate Committee on the Judiciary, on S. 87, 74th Cong., 1st Sess., January 31 to February 16, 1935, 493 pages.

130 S. Report 367, 74th Cong., 1st Sess., March 23, 1935.

In his January 6, 1937, message to Congress, however, he opposed a constitutional amendment and called for an enlightened view on social legislation by the Supreme Court. At the same time he informed reporters at his first press conference of the year that plans were under way to do something about minimum wages and also something about the Supreme Court opposition.<sup>131</sup> It has been suggested that there existed in the mind of the President an almost organic relationship between the court reorganization plan and minimum wage legislation. Looking back upon the events of the first half of 1937 this hypothesis carries some plausibility. During the month of January there was great official activity on the subject of wage legislation. In the many drafts of proposed laws that were made, the chief objective was to frame a law that would meet the requirements of the Supreme Court. The President held frequent conferences with Senator Black and Representative Connery and immediate recommendation of a wage and hour bill by him was forecast.

Suddenly on February 5, 1937, the President sent to Congress his message on the judiciary. The next three months were monopolized by this issue to the exclusion of nearly everything else and it was not until May 24, 1937, that the President sent Congress his message on wages and hours legislation. Bills were introduced by Black and Connery.<sup>132</sup> Except for minor differences in unimportant details the bills were identical. They had been drafted by agents of the administration. Of the many persons having a part in the creative process, Robert H. Jackson of the Department of Justice seemed to have been most active. In order to expedite matters joint hearings were held by the House Committee on Labor and the Senate Committee on

131 John S. Forsythe, "Legislative History of the Fair Labor Standards Act," *Law and Contemporary Problems*, VI, 464-490 (Summer, 1939). This article gives an excellent account of the successive stages in the evolution of the Fair Labor Standards Act from January, 1937, until its passage in June, 1938. It has been heavily drawn upon in the preparation of the following summary.

132 S. 2475 and H. R. 7200, 75th Cong., 1st Sess.

Education and Labor.<sup>133</sup> During the course of the hearings Representative Connery died suddenly and Mrs. Mary T. Norton of New Jersey succeeded to the chairmanship of the committee. Mr. Jackson appeared as the chief administration witness. He addressed himself chiefly to the question of the bill's constitutionality. The rationale of the suggested bill is reflected in his explanation:

This act combines everything, and is an effort to take advantage of whatever theories may prevail on the Court at the time that the case is heard. Of course, that results in a good deal of complication.<sup>134</sup>

In general, as in previous hearings on this subject, the employers and employees lined up on opposite sides. John L. Lewis, William Green, and Sidney Hillman united in supporting it, although there were some differences among them in regard to the amount of discretion which should be left to the administering agency. Most noticeable among those appearing in opposition were representatives of the National Association of Manufacturers and the Chamber of Commerce of the United States.

The bill as reported out by Senator Black on July 8 contained several changes.<sup>135</sup> The extremely broad provisions of the original proposal had been replaced by more restrictive ones. While there was still no statutory minimum wages or maximum hours the power of the board was limited. The minimum wage could not exceed forty cents an hour, nor could maximum hours be set below forty hours a week. Advisory committees were made mandatory in the act. The child labor provisions were made applicable to all children under 16 instead of 18.

<sup>133</sup> Joint Hearings before the Committee on Education and Labor of the U. S. Senate and the Committee on Labor of the House of Representatives on S. 2475 and H. R. 7200, 75th Cong., 1st Sess., June 2 to June 22, 1937, 1222 pages.

<sup>134</sup> *Ibid.*, p. 54.

<sup>135</sup> S. Report 884, 75th Cong., 1st Sess., July 8, 1937.

The Senate took up the bill on July 27, 1937, debated it for five days, amended its child labor provisions but rejected numerous emasculatory amendments, and on July 31, 1937, after defeating a motion to recommit by a vote of 48 to 36, approved it 56 to 28.

The House Committee on Labor made numerous amendments to the Black bill and reported it favorably on August 6, 1937. Blocked from further progress by an unfriendly Rules Committee, the bill died on the calendar when Congress adjourned.

In the early fall of 1937 President Roosevelt called a special session of Congress for November 15, 1937. On October 12, in a radio address he called for wage and hour legislation during the coming session, and in his special message to the session on November 15, he urged such action. The House Committee on Rules was still the obstruction to further progress so Mrs. Norton started a discharge petition. A temporary coalition with supporters of farm relief produced the necessary 218 signatures and the discharge petition was called up by Mrs. Norton on December 13 and approved by a vote of 285 to 123.

On December 17, after five confusing days of debate the whole thing came to naught when the House voted to recommit the bill 216 to 198. Chief among those responsible for this turn of events was the American Federation of Labor. At its convention in Denver this body had attacked the existing bill for leaving too much discretion to those who were to administer it.<sup>136</sup> A substitute bill had been drafted by the convention pro-

<sup>136</sup> The difficulty back of the American Federation of Labor defection was two-fold. In the first place, William Green's original endorsement had been made without consulting some of the vice presidents representing specific industries or departments. Several of these individuals were opposed to certain of the provisions in the original bill; it did not meet with their approval when Mr. Green came out with a general endorsement. Through their influence the Denver convention instructed Mr. Green not to make any more statements without consulting these department heads. The second cause of American Federation of Labor dissatisfaction with the original bill grew out of its growing distrust toward the National Labor Relations Board. As the suspicion became more general that the National Labor



viding for a rigid forty-cent minimum and a forty hour maximum with an eight-hour day, leaving no discretion to its administrator. Failing to get this bill accepted by the House, the Federation threw its support behind the motion to recommit.

When the special session adjourned without enacting any wage-hour legislation, the prospects of achieving any in the coming regular session were not regarded as bright. The Supreme Court bill and its aftermath had temporarily at least, reduced the effectiveness of presidential influence in Congress.

Several events took place during the winter and early spring of 1938, however, that served to throw the wage-hour bill back into the limelight. The election (to the Senate) of Lister Hill from Alabama and Claude Pepper from Florida was the initial factor. Both candidates were strong supporters of the wage-hour bill and made much of it in their campaigns. Their success indicated that the issue was a popular one with the voters, a point upon which the membership of Congress had been uncertain. Furthermore, the results of an Institute of Public Opinion Poll showed an overwhelmingly strong majority in favor of such legislation.

A third bill, still bearing the number S. 2475, was reported out by the House Committee on Labor.<sup>137</sup> The influence of the American Federation of Labor was evident; the bill was totally inflexible. Administration was lodged with the Secretary of Labor with no discretion whatsoever being allowed. Wage rates and hour standards were written into the bill itself; no provisions were made for differentials, regional or industrial. Once again the problem arose of getting the bill past a hostile Rules Committee, and in the process the history of the previous session was almost exactly duplicated. Once more Mrs. Norton

Relations Board was administering the National Labor Relations Act with a pro-Congress of Industrial Organizations and an anti-American Federation of Labor bias, this was reflected in the move to reduce the discretion of the administering agency in the wage-hour law by writing the important provisions into the statute.

<sup>137</sup> H. Report 2182, 75th Cong., 3rd Sess., April 21, 1938.

filed a discharge petition; once more Chairman O'Connor of the Rules Committee professed complete support of the bill; and once more Martin Dies opposed the rule before the House. The House again voted to discharge the Rules Committee, 322 to 73.

The House passed this bill without substantial amendment on May 24, 1938, the vote being 314 to 97. The House version of S. 2475 was diametrically opposite to the Senate version both in principle and in its administrative features, hence the conference committee was confronted with the task of writing a completely new bill. After twelve days of arduous work the conference report was presented.<sup>138</sup> It was in the form of a new bill striking somewhere between the extreme rigidity of the House bill and the almost completely discretionary measure which had passed the Senate. An inflexible ceiling on hours and floor under wages was accompanied by provisions permitting a gradual attainment of these objectives. No regional differentials were specifically provided for but there was general belief that such a system was possible under certain interpretations of the law. Enforcement was placed in the Department of Labor and the administrator's discretion was to be considerably restricted by industry committees appointing him. Finally, the child labor provisions of the original bill introduced by Senator Black were retained.

The House approved the conference report after a brief but informative debate by a record vote of 291 to 89 on June 14, 1938. The same day the Senate considered and approved the report, devoting some two hours to a spirited discussion of the constitutionality of the bill as it now stood. Senator Bailey of North Carolina was the chief opponent of the measure with Senator Borah of Idaho, a conferee, arguing in its support. Interestingly, Borah, the chief defender, was a Republican who had not even attended the joint hearings which had been held on the wage-hour bill the previous year.

<sup>138</sup> H. Report 2738, 75th Cong., 3rd Sess., June 11, 1938.

Final achievement of a wage and hour act had come eighteen months after the movement had been initiated. The amount of committee work and the labor involved in working out the various specific sections of the measure had been enormous. Ten different bills had been considered at different times, and the files of the House Committee on Labor showed twenty-five separate drafts which had been considered by the committee although only four of these had ever reached the floor.<sup>139</sup>

The fact that the bill as finally passed was something quite different from the version drawn up by the Department of Justice indicates that the impact of Congress was not without effect. Certainly, congressional influence in the completed product was not less significant than that of the administration and, in its embryonic beginnings at least, the national wage-hour regulation was wholly legislative.

139 Forsythe, *op. cit.*, p. 488.

# CHAPTER V

## NATIONAL DEFENSE LEGISLATION

### 1903-1940

#### INTRODUCTION

LOGICALLY, national defense legislation should be treated as a unit with military and naval matters considered as component parts of the single whole. The contrast between wartime and peacetime legislation would be most strikingly illustrated by such a mode of treatment. To do this, however, would convey a sense of unity which in reality does not exist. Army and Navy matters have rarely been treated as a unit by the President and Congress. Historically, our armed forces have gone their separate ways in splendid isolation. The country's defense needs, or more accurately the needs or desires of the respective services, have been studied as two separate and comparatively unrelated problems. When new legislation is contemplated, the initial impulse within the department is largely an internal matter conceived and developed without benefit of consultation with the other arm of our defense forces. It retains this insulated character throughout its consideration by the Chief Executive. When the bill goes to Congress it is shunted off to its particular committee where once again the entire organizational and personnel arrangement is such that all likelihood of coordination is removed. Even the appropriation stage takes place independently because of the prevailing practice of separate subcommittees for the two departments. Finally, Congress rarely has an opportunity to consider Army and Navy problems at the same time. For these reasons it has seemed more realistic to treat the Army and Navy separately.

The following acts have been selected for study: Militia Act of 1903, General Staff Act of 1903, National Defense Act of 1916, Selective Service Act of 1917, Army Reorganization Act of 1920, Selective Service Act of 1940; Navy Acts of 1901-1908, Navy Act of 1916, Navy Act of 1921, Naval Reconstruc-

tion Act of 1928, Vinson Navy Act of 1934, Billion Dollar Navy Act of 1939. This selection does not include all defense legislation passed during this period. It does represent the most notable cases where national defense policy has taken important turns.

### ARMY LEGISLATION

In retrospect the Spanish-American War has assumed proportions and a grandeur which differs sharply from the unromantic odor of the period immediately after its close. The investigation that Congress made into the prosecution of the war revealed a state of official inefficiency that might have had serious effects had not the foe been paralyzed by decadence and corruption. Widely publicized reports of these deplorable conditions coupled with the fortunate accident of an able and aggressive Secretary of War transformed the post-war period from one of reaction and "do-nothingism" to one of forward-looking military legislation.

For his post-war Secretary of War President McKinley chose the well-known New York lawyer, Elihu Root. McKinley had in mind the troublesome problems of colonial government which the Spanish War had brought to America. These problems, he knew, would be thrown upon the War Department and he was thinking of civil rather than military matters when he prevailed upon Root to take the post. There is evidence that it was only with this idea in mind that Root finally decided to accept.<sup>1</sup> Once in the job, however, Root with characteristic thoroughness determined to find out more about army organization and administration. He learned much from the writings of General Emory Upton who had published a work on military organization in 1878 only to have it officially ignored and forgotten. So much impressed with the fundamental soundness of this work was Root, that he had it published as an official document in 1904. He incorporated many of Upton's proposals in

<sup>1</sup> Philip C. Jessup, *Elihu Root* (New York, Dodd Mead and Company, 1938), 2 vols., I, 240.

the recommendations which he urged upon Congress in his yearly reports. These Annual Reports, 1899-1903, still remain as some of the finest examples of executive reporting in the history of the country.<sup>2</sup>

In his first report in 1899, Root outlined his conception of an adequate legislative program for the army in a comprehensive, extremely modern presentation which included the following recommendations: planning for specific contingencies of possible conflict with plans for meetings such contingency; study of war science as it developed throughout the world; selection and promotion of officers according to merit; establishment of an army war college; creation of a general staff; systematic extension of military education, including expansion of West Point. During the next four years he continued to hammer on these objectives with amazing success. When he left the War Department in 1904 he had the satisfaction of seeing virtually every one of his major proposals already on the books.<sup>3</sup>

#### THE MILITIA ACT OF 1901

Three notable measures were enacted during this period. The first, the Act of February 2, 1901, which increased the size of the permanent army, had received congressional attention before Root's appointment. The bill had been passed by the House and favorably reported by the Senate committee early in 1899.<sup>4</sup> Root did not take office until August of that year, but he lost no time in making his views known. That Congress insisted on exercising its own judgment rather than passively accepting his recommendations *carte blanche* is revealed by

<sup>2</sup> These five reports have been published together under the title, Elihu Root, *Five Years of the War Department Following the War with Spain, 1899-1903*, Washington, D. C., 1904.

<sup>3</sup> Throughout his service as Secretary of War, Root assumed the key position as far as army legislation is concerned. President Roosevelt gave his full support to Root's recommendations, but it is clear that Root and not Roosevelt was the focal point of army recommendations. This was not true of the navy. Here Roosevelt himself took the chief responsibility for working out policy.

Root's own words. He wrote to General Otis on December 21, 1900, "The Army bill has been frightfully carved up already, and I do not know that I shall be able to recognize it when it comes out of Congress." <sup>5</sup> Similar sentiments were expressed to General Wood on January 2, 1901:

I suppose we will have some army legislation within a few weeks, but no one can tell yet what it is going to be. The Senate Committee has reported pretty nearly the bill that I sent to them. The House has cut out all the good things that they understood, and put in all the bad things they could think of. Whether in the result the Lord will protect the right, or the Devil take the hindmost, I cannot tell.<sup>6</sup>

Notwithstanding these gloomy predictions, the final act embodied most of Root's recommendations.

#### THE MILITIA ACT OF 1903

One of the most thorny problems that has resisted permanent solution throughout the history of our armed forces has concerned the militia and its relationship to the regular army. Because of its constitutional status and its relatively impregnable political position the organized militia or the National Guard, as it has been called for many years, has managed to thrive in spite of the undisguised hostility of the regular army. The schism has been an eternal one which has recurred periodically with the advantage shifting slightly from time to time. Every time that the military organization of the country has come in for reconsideration, the militia-regular army issue has been revived and the struggle has often been protracted. The Militia Act of 1903, achieved with a minimum of friction, is a substantial testimonial to the political sagacity and tactical ingenuity of Secretary of War Root.

The act grew out of an agreement reached between the regular army, represented by the War Department, and the Na-

<sup>5</sup> Jessup, *op. cit.*, p. 256.

<sup>6</sup> *Ibid.*

tional Guard, represented by its annual convention which met in Washington, D. C., in January, 1902. Root served as the intermediary as well as the initiator and chief motive force. He was responsible for the preparation of a bill which embodied the agreements reached by the parties involved. The bill was then presented by Root to Representative Dick, Chairman of the House Committee on the Militia, who introduced it on February 21, 1902.<sup>7</sup> The House approved the measure without amendment by a division vote of 180 to 28.

The following session the Senate Committee on Military Affairs reported the measure without amendment. The committee report indicates the close tie between the committee personnel and the Secretary of War. It merely quotes six lines from the President's message to Congress, two pages from the Annual Report of the Secretary of War, and adds, "Your committee, after full consideration, also recommended the passage of the bill."<sup>8</sup> With a single change the Senate approved the bill after devoting less than twenty-five pages of the *Congressional Record* to a discussion concerned mainly with minor details. The vote on January 14, 1903, was not recorded. The House concurred in the Senate amendments without discussion and the bill was signed by President Roosevelt on February 21, 1903.

The apparent ease with which this potentially controversial bill slipped through Congress should not be misinterpreted. The

<sup>7</sup> H. R. 11654, 57th Cong., 1st Sess. This bill later gave way to H. R. 15345, an amended version of the original.

<sup>8</sup> S. Report 2129, 57th Cong., 2nd Sess., December 4, 1902. Senator Proctor of Vermont, chairman of the committee, was one of Root's mainstays in his drive for legislation. In this connection Root's remarks regarding the task of enlisting congressional support are of interest. The process, he said, was "a simple one, but it takes time. One has to get into direct personal touch with the members of the committees having the matter in charge, and has to first convince them that he has more knowledge of the subject than they have, and next that he is sincere. When that has been accomplished by the Cabinet Officer he will have success as a rule. Barring an occasional slant of personal or local interest, the committees are anxious to do what is best for the country, and when you have created such a belief in their minds, you can carry on a campaign of education which will ultimately bring out



lack of friction was not fortuitous. Root had carefully prepared the setting and had done his best to make sure that all the ingredients had been properly blended. Despite urgent requests for more precipitous action on the part of his army advisers he had bided his time. The result was a monument to the wisdom of his action. A careful observer has summarized aptly the peculiar Root contribution to this case :

The share of the executive in the measure's success, when so many previous recommendations had been futile, lay principally in Root's willingness to cooperate with forces outside his department, to consult all interests concerned, and to frame a measure representing this composite view.<sup>9</sup>

#### THE GENERAL STAFF ACT OF 1903

The last and probably the most important of the major military enactments during Root's administration was the General Staff Act of February 14, 1903. While this act was less controversial than the Act of 1901 or the Militia Act, its passage was probably more completely due to the influence of Secretary Root than either of them. Problems of internal organization do not ordinarily arouse much interest outside the immediate environs of the department concerned. As a rule Congress takes little interest in such matters unless some favored agency is threatened or some function jeopardized. For this reason attempts to bring about such changes frequently suffer more from inertia than from opposition. This had been the case in the struggle for a general staff law. For years there had been much discussion of the need for some kind of general planning and coordinating agency to supplement the activities of the Secretary of War and the General of the Army. The inefficient prosecution of the Spanish War had served to bring home more sharply the inadequacy of our existing military organiza-

<sup>9</sup> Howard White, *Executive Influence in Determining Military Policy in the United States* (Urbana, University of Illinois, 1925), p. 240.

tion, but additional impetus was needed to achieve the much-needed reform.

This was the contribution that Secretary Root made so effectively. Beginning with his first annual report in 1899, Root laid down the outlines of the general staff organization which he visualized. During the remainder of his term of office he continued to pound on this issue, repeating it in each of his yearly reports until it became a *fait accompli* in 1903. He made no effort to gain his objective the first year, or the second, or even the third, but he never ceased exerting pressure where it would do the most good, on the committee personnel. Whenever he appeared before one of the military committees he did a bit of missionary work. Personal appearances were supplemented by correspondence between Root and the committee chairmen. Beginning early in 1902, he began to intensify his campaign. During March of that year he appeared before the Senate Committee on Military Affairs in support of a general staff bill drafted by him.<sup>10</sup> This bill was not reported out of committee. The following session another general staff bill drafted under his direction was introduced by Representative Hull of Iowa, December 2, 1902.<sup>11</sup> The House Committee on Military Affairs made some rather important changes in it and reported it with these amendments on December 18.<sup>12</sup> With very few additional amendments, on January 6, 1903, the House passed the bill by a vote of 154 to 52.

Senator Cockerell reported the bill from the Senate Committee on Military Affairs with five minor committee amendments. The Senate considered it on January 31, 1903, agreed to the five committee amendments without debate, and passed the bill itself without explanation or discussion. The final vote on January 31, 1903, was *viva voce*. On February 3, the bill was re-

<sup>10</sup> *The Military and Colonial Policy of the United States: Addresses and Reports by Elihu Root*. Collected and edited by Robert Bacon and James Brown Scott (Cambridge, Harvard University Press, 1916), p. 411.

<sup>11</sup> H. R. 15449, 57th Cong., 2nd Sess.

<sup>12</sup> H. Report, 57th Cong., 2nd Sess., December 18, 1902.

considered and an additional amendment was approved without discussion. This procedure was repeated on February 4. The conference report was agreed to in both houses without debate or roll call. Thus it is seen that the legislative phase of the General Staff Act of 1903 was easily the least important. Secretary Root's proposal became law although not in the exact form that it came from his pen.

The congressional role in military legislation during the post-Spanish War era was definitely secondary to that played by the Secretary of War. Yet this should not lead one into the error of discounting its importance. As Professor White says with reference to this period:

Congress, however, was by no means a passive ratifying body, altho it depended upon the executive to recommend and draft the measures. Its modifications of these measures were, in the main, intelligent, largely because it approved the decisions of its military committees.<sup>13</sup>

#### THE NATIONAL DEFENSE ACT OF 1916

A quickening sense of public danger accompanied the mounting intensity of the war in Europe. During 1915 the atmosphere was further troubled by the turn of events in Mexico. The natural concomitant of this unsettled state was an increasing demand for better defense preparations. The War Department and the military committees of Congress were not idle. The General Staff, more particularly the War College Division of that agency, had long been engaged on plans for a more adequate defense organization. The congressional committees under the leadership of Senator Chamberlain and Representative Hay had approached the problem from their own points of view and had already made some headway on prospective legislation.

President Wilson was reluctant to admit the need for increasing the armed forces. He had come into office with an ambitious domestic program on his agenda; his success to date had been

<sup>13</sup> White, *op. cit.*, p. 241.

striking and he was loath to permit the intrusion of foreign interruptions until his plans could be carried through to completion. But Colonel House returned from Europe in the summer of 1915 thoroughly disturbed by what he had seen. He lost no time in converting Wilson to the belief that America was in danger. The Chief Executive directed his cabinet officers to initiate plans for expanding our armed forces. In his annual message of December, 1915, the dominant note was vigorous defense.

Secretary of War Garrison worked closely in conjunction with the Army General Staff. The plan thus projected called for a sharp increase in the standing army, certain internal organizational changes, expansion of West Point, and the creation of a so-called "continental army." This organization was to be recruited by volunteers entirely; it was hoped to recruit men at the rate of 133,000 a year so that at the end of three years its personnel would reach 400,000 where it would be stabilized. The plan called for a short period of intensive training to be followed by three years of reserve duty, thus affording a perpetual reserve force of 400,000 under the exclusive jurisdiction of the War Department and subject to call at any time. The War Department plan paid lip service only to the National Guard. Ostensibly, it was to remain an integral part of the armed forces of the country, but it was apparent that there were no plans in store for carrying out this assurance.

In his message of December, 1915, President Wilson approved in a general way the program advocated by Secretary Garrison. Early in January the military committees of both houses proceeded to hold comprehensive hearings.<sup>14</sup> It soon became clear that the issue that was to dominate the formulation of the bill was: what place will the National Guard occupy in

<sup>14</sup> Hearings before the House Committee on Military Affairs on a bill to Increase the Efficiency of the Army, 64th Cong., 1st Sess., January 6-February 11, 1916. 1514 pages. Hearings before the Senate Committee on Military Affairs on bills for Reorganization of the Army and Creation of a Reserve Army, 64th Cong., 1st Sess., January 18-February 8, 1916. 1053 pages.

the new defense program? Secretary Garrison appeared before the House Committee on Military Affairs on January 6, 1916, to explain and defend the bill which contained the ideas of the War Department. Besides stating his case for the proposed "continental army" he spoke out against the militia.<sup>15</sup> In so doing he ran head on into the program which had been adopted by the committees. Both Representative Hay and Senator Chamberlain had committed themselves in favor of the militia pay bill plan which they had been studying for almost a year. This plan proposed to increase the National Guard and, by a contractual provision, obligate all state soldiers drawing pay from the United States to serve in the regular army in time of war.

In urging his "continental army" proposal, Garrison admitted that it would probably take the place of the militia whose pay, he said, should come from the states and not from the Federal Government. He favored an increase in the amount of federal aid that should be given to the states for the militia but he did not wish to rely upon it for national defense. The Secretary of War had ample support in his position. Senator Elihu Root, who spoke with unusual authority because of his long association with the War Department, vigorously opposed any plan to increase the National Guard as a defense measure and gave the continental army plan his unqualified support.<sup>16</sup> Other leading figures quickly aligned themselves behind one plan or the other. The Garrison plan had wide support but was opposed by two groups—those who thought that it did not go far enough, and those who thought it went too far. Among the former were those who pressed for compulsory military training as the only positive method of guaranteeing an adequately trained army. Outstanding among this group was Major-General Leonard Wood who assailed the continental army idea as totally inadequate because it was wholly dependent upon volunteers for its strength. He argued that only by greatly increasing the reg-

<sup>15</sup> *New York Times*, January 7, 1916, p. 6.

<sup>16</sup> *Ibid.*, January 8, 1916, p. 1.

ular army and then providing for compulsory military training of all young men would it be possible to meet the needs of the country.<sup>17</sup> On the other hand the sentiment for federalizing the National Guard was increasing steadily. A poll of opinion throughout the nation by the *New York Times* revealed more than a two to one preference for this proposal.<sup>18</sup> As the successive points of view were presented before the committees the schism between the National Guard group and the regular army group deepened. Chairman Hay informed the President on January 11 that he would not support the continental army plan.<sup>19</sup>

When it began to appear that Secretary Garrison was waging a losing battle against the federalization of the National Guard, he sought to enlist the support of the President. At first Mr. Wilson demurred, apparently unwilling to commit himself, but on February 10, 1916, he wrote Secretary Garrison:

I am not irrevocably or dogmatically committed to any one plan of providing the nation with such a reserve, and am cordially willing to discuss alternative proposals. . . . It would never be proper or possible for me to say to any committee of the House of Representatives that so far as my participation in legislation was concerned they would have to take my plan or none.<sup>20</sup>

Garrison did the only thing possible for one who had cast his lot in uncompromising support of a particular issue and failed; he resigned, expressing the hope in his letter of resignation that the President would at last come out with a clear statement of where he stood on the military program.<sup>21</sup>

<sup>17</sup> *Ibid.*, January 27, 1916, p. 4.

<sup>18</sup> *Ibid.*, January 31, 1916, p. 1.

<sup>19</sup> *Ibid.*, January 12, 1916, p. 4.

<sup>20</sup> *Ibid.*, February 11, 1916, p. 2. This was odd language from a President who had taken such a strong line with Congress in the Clayton Act of two years before and who was to brook no modification of the language of the Selective Service Act just a year later.

<sup>21</sup> *Ibid.*

From this moment on it was conceded even by its advocates that the continental army plan was dead. The only task that remained was that of working out some of the details of the remainder of the bill. In a conference with the ranking Republican members of the House Military Affairs Committee the President was assured that the continental plan was out. "Mr. Wilson stated his own preference for the Continental plan. He made no effort, however, the White House visitors said later, to sway them in their opinions beyond stating his own belief based on that of his military advisers, that the State troops would not serve national needs as efficiently as the proposed Federal force would do."<sup>22</sup> The House of Representatives was not unappreciative of the President's generous gesture. On February 11, it passed a resolution thanking him for the confidence he had exhibited in the Committee on Military Affairs, in his letters to Secretary Garrison.<sup>23</sup> The non-partisan character of this exchange of courtesies is indicated by the fact that the resolution was offered by Representative Kahn, ranking Republican member of the committee.

The House Committee on Military Affairs completed its bill and reported it to the House on March 16, 1916.<sup>24</sup> As reported, the bill provided for a standing army of 140,000. In addition to several other features it provided for federalization of the National Guard, following in this respect the recommendations of the bill which had been submitted by the National Guard Association on February 26. The continental army was not mentioned in the committee report and the bill omitted any reference to it. A section authorizing the Federal Government to engage in the production of nitrates by hydro-electric development (Muscle Shoals) was also in the bill as it came from committee.

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*, February 12, 1916, p. 1. The entire exchange of correspondence between President Wilson and Secretary Garrison regarding the army bill was made public when Garrison resigned.

<sup>24</sup> H. Report 297, 64th Cong., 1st Sess., March 6, 1916.

Because of the confusion growing out of the conflicting rumors that had circulated since the resignation of Secretary Garrison many members of the House were uncertain of the administration's attitude toward the measure which the committee had reported. A brief inquiry by Representative Moore of Pennsylvania reflects this state of mind. "A number of the Members of the House, I am sure, desire to be informed whether, when they vote on this bill, they will be voting in accordance with the wishes of the President of the United States and the War Department, and upon suggestions made by them."<sup>25</sup> The reply of the committee chairman, Mr. Hay, is worth quoting at some length:

Mr. Chairman, I am authorized to state by the President of the United States that this bill meets with his approval. In other words, it is his bill; it carries out the recommendations which he made to Congress when he addressed Congress at its convening in December last. It goes a little further than the President asked us to go. It is true that the continental army is not provided for in this bill, but the President, in recommending a continental army, recommended machinery by which military forces should be raised in time of peace that will be ready in time of war.

The President thinks this bill, as it is drawn, makes the National Guard a sufficient force in time of peace to be used in time of war, and that it meets the purpose he had in mind. The Secretary of War, of course, agrees with the President, and I may say, in broad language, that this is the President's bill and that he thoroughly approves of it.<sup>26</sup>

Debate was unusually thorough, many twenty-minute speeches being delivered. Partisanship was virtually non-existent. The discussion which was confined to the bill itself manifested the same spirit of independent interest that was apparent in the voting on the several important amendments. An amendment by Representative Gardner authorizing the Secretary of

<sup>25</sup> *Ibid.*, p. 4396, March 18, 1916.

<sup>26</sup> *Ibid.*



War to permit any enlisted man who had served one year of his seven-year enlistment to be furloughed to the army reserve for six years (a provision bearing some resemblance to the continental army plan) was accepted over the opposition of the committee, 203 to 198. A motion by Representative Kahn to increase the regular army from 140,000 to 220,000 was defeated 191 to 213. A motion by Representative McKenzie to strike out Section 82 (the manufacture of nitrates by water power) was also agreed to, 224 to 180. The final vote which came on March 23, 1916, saw the bill passed by the overwhelming majority of 403 to 2.

The Senate bill reported by Senator Chamberlain on March 17, 1916, was considerably more comprehensive, involving a general reorganization of the entire army structure as well as the increases called for by the President.<sup>27</sup> This bill had originally been introduced by Senator Chamberlain on March 4, 1916, with the explanation that he had prepared a bill the preceding summer and submitted it to the committee which had worked out the bill he was then introducing. This bill in turn had undergone extensive rewriting at the hands of the committee so that the bill reported on March 17, was the product of many days of painstaking scrutiny by the Senate Committee on Military Affairs. In general, it was more in harmony with the wishes of the War Department than the House version had been. Although it also provided for federalizing the National Guard, the continental army scheme was present in modified form. It recommended a much larger standing army than the House had been willing to approve. (As finally approved, the Senate bill provided for a standing army of 250,000.) During the protracted debate sharp attacks were made on both the National Guard and volunteer army provisions but the bill as finally approved retained both of them, the latter squeaking

<sup>27</sup> S. Report 263, 64th Cong., 1st Sess., March 16, 1916. This report, twenty-six pages in length, with a minority report of two pages, gives an excellent summary of the bill and the reasons for its provisions. The present bill was said to be a consensus of the Hay, Chamberlain, and War Department bills.

through by the narrow majority of 36 to 34. The Senate also approved the nitrates production provision. The final vote of approval on April 18 was not recorded but numerous roll calls on various points indicated that the relative ratio was about 4 to 1 in its favor. Hundreds of amendments were offered during the three weeks of controversy and not a few of them were accepted but they did not modify the essential spirit of the bill that had been originally reported.

The end was by no means near, however. Several significant differences between the two houses loomed very large when after more than two weeks of bargaining the conferees reported that they had been unable to reach any agreement.<sup>29</sup> The chief points of controversy were: the size of the standing army, the volunteer army provision of the Senate bill, and the nitrates production provision which the House had rejected and the Senate had approved. It was reported that President Wilson had requested Mr. Hay to accept the Senate nitrates provision and further rumored that he had made a similar request in relation to the volunteer army plan although the latter point had not been confirmed.<sup>30</sup> On May 8, the House voted down the 250,000 army provision, 142 to 221, rejected the volunteer army provision, 109 to 251, but approved a limited form of the nitrates development provision and sent the bill back to conference.<sup>31</sup> On May 11, the Senate conferees were still reported unwilling to yield on the 250,000 figure for the standing army.<sup>31</sup>

In the end it was the Senate that gave way. The bill reported by the conference committee followed the House version in most important points.<sup>32</sup> The standing army was comprised at a minimum figure of 175,000 which was again a victory for the House rather than the Senate. The volunteer army pro-

28 H. Report 644, 64th Cong., 1st Sess., May 5, 1916.

29 *New York Times*, May 5, 1916, p. 6.

30 *Ibid.*, May 9, 1916, p. 3.

31 *Ibid.*, May 11, 1916, p. 3.

32 H. Report 695, 64th Cong., 1st Sess., May 16, 1916.

vision was struck out in its entirety and the Senate accepted the House limitations on the governmental manufacture of nitrates. In this form the bill was approved by both houses but not until after the Senate had devoted thirty-five more pages of the *Record* to it. Most of this space was taken up in a complete re-examination of the nitrates manufacturing proposal. Final vote in the Senate was not recorded; the House approved by a vote of 351 to 25.

The important National Defense Act of 1916 can not be neatly catalogued as the product of the administration although its origin and initial form were doubtless primarily administrative. Neither can it be docketed as a thoroughbred congressional measure despite the strong hand of Congress apparent in its final wording. In common with the great majority of important statutes this one was an amalgam of many measures, coming from as many different sources. The ideas of the various interested groups, those of the Chief Executive himself, and those of the individual members of Congress, particularly the members of the committees, all entered into the cauldron from which the completed product eventually emerged.

#### THE SELECTIVE SERVICE ACT OF 1917

From the point of executive-congressional relations, the Selective Service Act of 1917 offers an interesting contrast to the National Defense Act of 1916. It must be borne in mind that the former was a war-time measure, while the latter came during peace time when congressional independence was at its height, even though a portent of war was present. The difference in conditions is significant but there are other differences the importance of which are almost equally great. In striking contrast to the almost timid equivocation which characterized the presidential attitude toward the national defense bill was the uncompromising forthrightness exhibited toward the selective service bill. This adamant stand did as much as anything else to assure that the bill as passed was not essentially different from that which was initially presented to Congress.

For more than a year before our entry into the war, the question of how a war army should be recruited had occupied the minds of many persons. As early as December 13, 1915, Senator Chamberlain had introduced a bill imposing a system of compulsory military training on a nationwide basis.<sup>33</sup> Because of the precedence claimed by the national defense bill the Senate Committee on Military Affairs had been unable to devote very much attention to the military training bill, although some of the witnesses who appeared in relation to the former also gave testimony on the latter.<sup>34</sup> Immediately upon the convening of the second session of the Sixty-fourth Congress, however, a subcommittee of the Senate military committee, under the direction of Senator Chamberlain, held very extensive hearings on the compulsory military training issue.<sup>35</sup> Most of the testimony, except that from the army representatives, was strongly adverse. Of the exceedingly large number of witnesses who appeared before the subcommittee a substantial minority were prominent educators from all sections of the country. They were unanimous in their condemnation of compulsory training. This voluminous body of information and argument was in the possession of the Senate committee when the declaration of war came.

Just how early the President had decided upon conscription is not known but it is clear that the matter had been under discussion for some time for in his war message to Congress he included a reference to selective service as the method of recruiting an army.<sup>36</sup> A conscription bill was drafted in the War Department and submitted to the committee on military affairs

33 S. 1695, 64th Cong., 1st Sess.

34 Hearings before the Senate Committee on Military Affairs on the reorganization and creation of a reserve army, 64th Cong., 1st Sess., January 18–February 8, 1916. See testimony of Brig. Gen. M. M. Macomb on January 22, 24, 1916.

35 Hearings before a subcommittee of the Senate Committee on Military Affairs on S. 1695, 64th Cong., 2nd Sess., December 18, 1916–February 1, 1917. 1178 pages.

36 *Congressional Record*, 65th Cong., 1st Sess., p. 103, April 2, 1917.

of each house. It excluded all volunteers and applied only to young men between the ages of 19 and 25. As the committees received the bill there were rumblings, particularly among the members of the lower house where there existed a strong sentiment in favor of giving the volunteer method a chance to prove itself. The House committee held brief public hearings on the bill.<sup>37</sup> In the Senate no public hearings were held in view of the fact that this whole subject had been thoroughly explored during the hearings which had closed two months before. The Senate committee did, however, receive the comments of the Secretary of War, the Judge Advocate General, and one member of the General Staff.

During the House committee hearings, at which the chief witness was Secretary Baker, definite opposition to compulsory military service was widely expressed. The *New York Times* of April 9, 1916, reported that only about half of the House Military Affairs Committee favored conscription. Because of the unfriendly attitude of Chairman Dent it was rumored that the War Department bill would be handled by some other member. In order to turn the tide President Wilson made a personal visit to the House end of the Capitol on April 11. He conferred for over an hour with Speaker Clark and Majority Leader Kitchin, but according to the news dispatch neither of them could assure him that the draft bill would pass on the basis of the canvass that had been made.<sup>38</sup> The daily reports from the committee revealed a fluctuating but slowly increasing sentiment in favor of conscription as the backwash of opinion from throughout the country showed that the public as a whole was behind the President's program.

Before the House committee completed its action on the bill the Senate committee made its report.<sup>39</sup> Virtually no changes

<sup>37</sup> Hearings before the House Committee on Military Affairs on the Draft Bill, 65th Cong., 1st Sess., April 7-17, 1917. 265 pages.

<sup>38</sup> *New York Times*, April 12, 1917, p. 1.

<sup>39</sup> S. Report 22, 65th Cong., 1st Sess., April 19, 1917. This bill had been introduced by Senator Chamberlain just two days before.

had been made in the bill, but the committee report was very confusing in its explanation of what had been done. On the one hand it appeared to say that the volunteer system was retained while on the other it said that it was abolished, presenting at length the reasons why such a system was obsolete. Two contradictory sentences illustrate the ambiguity of the report as a whole:

While the measure establishes as a means of raising such forces the system of selective draft, it has left room for the operation of so much of the volunteer system as in our judgment is worthy of adoption. . . . The adoption of this system necessarily excludes the volunteer method upon which this country, following tradition rather than reason, experience, counsel, and the lessons of its own history as well as of the other nations of the world, has too long relied.<sup>40</sup>

The Senate began consideration of S. 1871 on April 21, 1917, to continue daily until April 28, when it approved the bill with very few amendments by a vote of 81 to 8.

Over on the House side things were taking quite a different turn. The early indications of a sharp divergence between the views of the President and the chairman of the House military committee became more evident as the committee concluded its work on the bill. Chairman Dent sought repeatedly to persuade the President to accept a compromise amendment permitting both the volunteer and the draft as methods of raising troops. The President was adamant. On April 17, he made it clear that he had no intention of yielding an inch on what he regarded as the essential feature of the bill.<sup>41</sup> Finally, the committee, by a vote of 13 to 7, reported out a bill in which the volunteer system was retained with a qualifying clause authorizing the President to invoke the selective draft system if the volunteer method did not prove adequate.<sup>42</sup> In view of the lack of har-

<sup>40</sup> *Ibid.*, p. 1.

<sup>41</sup> *New York Times*, April 18, 1917, p. 1.

<sup>42</sup> H. Report 17, 65th Cong., 1st Sess., April 19, 1917. The bill was introduced by Mr. Dent on the same day that it was reported from the committee.

mony between the views of the President and Mr. Dent it was announced on April 19 that Mr. Kahn, ranking Republican on the committee, would present the administration point of view during the House debate.

By the time the House had reached the voting stage there was little doubt of the outcome, notwithstanding the opposition of the Speaker, the Majority Floor Leader, and the Chairman of the Committee on Military Affairs. The House went down the line for the President's views. On a motion by Mr. Kahn the volunteer provision of the bill was struck out by a vote of 313 to 109. After rejecting most of the other numerous amendments the House approved the bill on April 28, 1917, 397 to 24. It remained essentially the same bill that had been prepared in the War Department.

In order to clarify the parliamentary situation the Senate repassed its own measure, on May 1, 1917, as an amendment in the form of a substitute to the House bill. The differences between the House and Senate were neither many nor great but numerous obstacles appeared to delay final action for two weeks longer. The bill was finally approved by both houses, May 16 and 17, 1917.

#### THE NATIONAL DEFENSE ACT OF 1920

The National Defense Act of 1920 must be considered in the light of its peculiar milieu of time and circumstance. Had it come a year earlier when the temper of Congress was milder, and had the President seen fit to take a more active part in its behalf the act itself might have turned out to be something quite different. As things worked out the act presents a valuable case study of executive-legislative relationships with the preponderance of influence resting easily with the legislature.

In December, 1918, almost before the smoke of battle had cleared away, Secretary of War Baker revealed to the press his intention to ask Congress for a vigorous continuation of the military program then in existence.<sup>43</sup> Early in 1919 the War

<sup>43</sup> *New York Times*, December 17, 1918, p. 5.

Department prepared a bill and Secretary Baker had it introduced by Representative Dent, the retiring chairman of the House Committee on Military Affairs.<sup>44</sup> Mr. Dent was not sympathetic to the bill; this may have been one of the reasons for its failure to receive attention. At any rate the session ended and the bill reposed in committee.

After having been somewhat amended, the War Department bill was introduced in both houses in the first session of the Sixty-sixth Congress.<sup>45</sup> When Senator Wadsworth, the new chairman of the Senate Committee on Military Affairs, introduced the bill on August 4, 1919, he explained that it had been transmitted to him by Secretary Baker. He inserted Secretary Baker's letter of transmittal into the *Congressional Record* and requested that one paragraph of it be read to the Senate. The paragraph is informative and bears repeating:

This is the latest form assumed by our studies on this subject in the War Department. We are still, however, unadvised by that intimate consultation of the experience and judgment of Gen. Pershing and his associates abroad, which would be necessary before a final draft could be said to represent the full opinion of the Army. I would not myself give official approval to a draft which did not contain the results of such a consultation. It is the purpose of your committee, however, to use this draft only as the basis of hearings, at which army officers will be in attendance, both those who have been familiar with the problems on this side and those who have had experience in the Expeditionary Forces.<sup>46</sup>

The New York Senator indicated his relation to the bill with the following statement: "May I say, Mr. President, that in introducing this bill I do not desire it to be understood that I am in any way committed to the support of any or all of its provisions."<sup>47</sup>

<sup>44</sup> H. R. 14560, 65th Cong., 3rd Sess.

<sup>45</sup> S. 2715, 66th Cong., 1st Sess., August 4, 1919; H. R. 8287, 66th Cong., 1st Sess., introduced by Mr. Kahn on August 5, 1919.

<sup>46</sup> *Congressional Record*, 66th Cong., 1st Sess., p. 3600, August 4, 1919.

<sup>47</sup> *Ibid.*, p. 3604.



The Baker-March bill, as the War Department bill came to be known, provided for a standing army of 500,000, three months of compulsory military training for all youths between 18 and 19 years of age, enlargement of the General Staff, and rather thorough reorganization of the army. It did not mention the National Guard.

Both committees held very comprehensive hearings on these as well as on other bills which represented points of view in some cases sharply at variance with those of the War Department.<sup>48</sup> Among the other bills was S.2691, known as the Kahn-Chamberlain bill, introduced on July 31, 1919. It provided for a more extensive compulsory military service system which included six months of training followed by a five-year period of membership in a citizen army. The Baker-March bill did not provide for any such citizen army in time of peace. On the other hand the Kahn-Chamberlain bill, because of this peace time organization always available upon call, provided for a standing army of only half of the figure recommended by the War Department. As for the National Guard, the Kahn-Chamberlain bill proposed to make it an integral part of the citizen army already mentioned. This bill had the support of such well-known and influential army men as Pershing, Wood, and Palmer.<sup>49</sup> Another important bill was S.3424, known as the

<sup>48</sup> Hearings before a subcommittee of the Senate Committee on Military Affairs on S. 2691, S. 2693, and S. 2715, 66th Cong., 1st Sess., August 7-December 17, 1919. 2054 pages. Hearings before the House Committee on Military Affairs on H. R. 8287, H. R. 8068, H. R. 7935, and H. R. 8870, 66th Cong., 1st and 2nd Sess., September 29, 1919 to February 5, 1920. 2236 pages.

<sup>49</sup> Friction had developed between General Pershing and General March during the war. Over the opposition of General March, Pershing had asked for and been granted complete control over all American forces in France. This breach was partly personal and partly a matter of honest difference of opinion. It is reflected in the differences which emerged during the consideration of the defense bill. Wood had long been a stormy petrel and was already famous for his independent views. Colonel Palmer had been detailed by General Pershing, at the close of the war, to return to the United States for the purpose of aiding the General Staff in working out the details of permanent military legislation. This Colonel Palmer had done and a bill

Frelinghuysen bill. It was prepared by a committee representing the National Guard, virtually independent from the regular army. Still another bill, H. R. 8870, introduced by Mr. Dent, represented the views of those who felt that there should be a sharp reduction in all military activities in the interests of both economy and peace.

The fall and winter of 1919-1920 was devoted to well-publicized hearings on the broad subject of national defense and armament.

Confronted with such antipodal bills, the committees decided to discard all of them and draft bills of their own. The Senate bill (S. 3792, 66th Congress, 2nd Session) introduced by Senator Wadsworth on January 23, 1920, was the work of a subcommittee headed by him. In working out the details of the bill the subcommittee had been assisted by Colonel John McA. Palmer and Colonel John W. Gulick, but these officers were working as counsel to the committee rather than as official representatives of the War Department. It incorporated the National Guard as part of the citizen army and provided for compulsory military training—a four months' period for all youths between the ages of 19 and 21, although this could be circumvented by enlistment in the National Guard; finally, it provided for a standing army of 280,000, to be reduced to 210,000 after the military training program got underway.

Meanwhile, matters had been moving along in the House. A subcommittee of the military affairs committee under the direction of Representative Anthony of Kansas had accepted the task of drafting a bill. The question of universal military training, a very touchy one because of the coming elections, was the

had been prepared under his direction. The War Department, however, had shelved this bill in favor of one of its own devising, known henceforth as the Baker-March bill. During his testimony before the Senate Committee on Military Affairs Colonel Palmer had not hesitated in expressing his objections to the Baker-March bill with the result that he was engaged by Senator Wadsworth as the military expert of the Senate committee. See the testimony of Brigadier-General Palmer before the Senate Committee on Military Affairs, July 3, 1940, during the hearings on the selective service bill.

single most controversial element in the pending bill, inasmuch as there was general agreement in the House that the National Guard provisions were to be retained substantially as they stood in the act of 1916. In early February it was reported that the Republican leaders had decided to shelve universal training as an economy measure.<sup>50</sup> Shortly thereafter Democratic leaders in the House announced a caucus for February 9, to determine the official party stand on the issue. This incident furnished the occasion for President Wilson to take action, the sole expression on his part during the entire eighteen months that the defense bill was before Congress.

When Mr. Wilson learned of the proposal to hold a caucus of House Democrats on the military training issue he immediately dispatched a message in the form of a letter to Secretary Baker asking them not to make a party issue of the training question. He said, in part:

In the present circumstances it would seem to me unfortunate to make a party issue upon this subject, particularly since within a few months the party will assemble in convention and declare the principles upon which it deems it wise to commit itself in a national election.<sup>51</sup>

Elsewhere in the letter he expressed approval of the training projects suggested by the General Staff. It was a double barreled rebuff, therefore, when the caucus after a lively debate attended by almost all of the 189 Democrats in the House, voted 106 to 7 to oppose universal military training.<sup>52</sup> Several members on the House committee were strongly committed to compulsory training; among these were men who had tremendous influence with the rank and file of the membership. Representative Kahn, the chairman, led this group. On the first test vote on February 20, the committee recorded itself, 11 to 9, in favor of universal training to become effective on July 1, 1922.<sup>53</sup> The

<sup>50</sup> *New York Times*, February 4, 1920, p. 1.

<sup>51</sup> *Ibid.*, February 10, 1920, p. 1.

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*, February, 21, 1920, p. 5.

vote was a surprise to the House leadership which had already gone on record as opposing such training. With the Democrats already committed against it it began to appear as if the training issue might become one of the leading issues of the coming campaign. To prevent such a situation the Republican leaders prevailed upon Mr. Kahn to shelve the military training issue until the next session when the party conventions and the election would be over.<sup>54</sup> With this matter settled the House committee voted the bill out, 10 to 6, on February 26, 1920.<sup>55</sup> No major changes had been made in the bill when it was approved by the House on March 18, 1920, 245 to 92, after 205 pages of debate.

After substituting its own bill (S. 3792) in the form of an amendment for H. R. 12775, the Senate passed the latter by a vote of 46 to 10 on April 20 thus sending both bills to conference. The differences between the two bills were considerable. Besides the voluntary military training provision of the Senate bill which had no counterpart in the House version, the differences in the National Guard sections were fundamental. The Senate bill had brought the National Guard under the army clauses of the Constitution, thus making it an integral part of the national army and hence more clearly under the control of the Federal Government. The House, on the other hand, had retained the 1916 language thereby keeping the National Guard under the militia clause of the Constitution and as such more subject to the states except in time of war. The House bill set the standing army at 300,000 whereas the Senate bill had a figure of 280,000. Many other differences were discernible, but the National Guard provision was the keystone of all agreement or disagreement.

In the end the House prevailed. Except for the size of the regular army which was placed at the Senate figure of 280,000, the House victory was complete. The House agreed to the confer-

<sup>54</sup> *Ibid.*, February 25, 1920, p. 14.

<sup>55</sup> *Ibid.*, February 26, 1920, p. 17. H. Report 680, 66th Cong., 2nd Sess., February 26, 1920.

ence report after one hour of debate by a vote of 237 to 107, on May 28, 1920. The following day the Senate agreed to the report without explanation or comment from the chairman or any of the members. The vote was not recorded.

The National Defense Act of 1920, the single important military measure between the first and second world wars, was not only a sweeping victory for the Congress but also an equally sweeping victory for the House.<sup>56</sup> In this sense it represented a victory for the forces of political pressures, particularly those of the potent National Guard Association. Perhaps the most striking aspect of the bill throughout its history was the absence of any strong or sustained presidential support behind it. Wilson was known to be in favor of the main points incorporated in the Secretary of War's proposal, but his influence was never made definitely felt. There was little tangible evidence of any active participation on his part in behalf of the bill. This was in such marked contrast to the usual Wilson demeanor that its effect was no doubt greater than would have normally been the case. When the President did finally decide to intervene in February, 1920, he did so in a half-hearted manner, and his proposal was almost wholly negative in character. This was not the kind of guidance that Congress needed in an election year if any semblance of executive leadership was to be maintained.

#### THE SELECTIVE SERVICE ACT OF 1940

The Selective Service Act of 1940 was the first peace time conscription law in the history of the United States, but it was considered and passed in an atmosphere of rising concern over the safety of the United States, because of the unexpectedly desperate turn that events had taken in Europe during the spring

<sup>56</sup> "The Army Act of June 4, 1920, is essentially the House bill, with almost nothing of the Wadsworth bill in it. In contrast with the large plans of constructive reform and the proposals of far-reaching changes urged upon Congress by military experts during the hearings, it is surprising how little there is in the bill as finally adopted that is novel or constructive." John Dickinson, *The Building of an Army* (New York, The Century Company, 1922), p. 373.

and summer of 1940. A large scale program of rearmament production had already been called for by the administration and was in the process of realization. In the light of these events it comes as something of a shock to discover the extremely unimportant part played by the President in the initiation and perfection of the Selective Service Act.

Even before the outbreak of open hostilities in Europe in the fall of 1939 the possibility of compulsory military service had begun to be openly discussed throughout the United States. Congress had killed a compulsory training provision in the National Defense Act of 1920, and the subject had remained a pretty dead one despite veiled references by Army representatives from time to time. By December, 1938, however, the question had revived sufficiently for the American Institute of Public Opinion under Dr. George Gallup to take a nation-wide poll. This poll showed a definite majority opposed to compulsory service, the ratio being 37 per cent favoring and 63 per cent opposed.<sup>57</sup> A second poll in October, 1939, after the beginning of the second world war but before sentiment in this country had been greatly aroused, revealed that the opposition to conscription had not diminished materially. This time the ratio was 39 per cent favoring and 61 per cent opposed.<sup>58</sup>

Germany's sudden demonstration of almost unbelievable military might during the spring of 1940 did much to shatter the sense of security that twenty years of peaceful existence had fostered in this country. From many directions the murmur for greater defense preparations became audible, although the chorus was by no means unanimous. On May 16, in a special message to Congress, President Roosevelt requested appropriations totaling 896 million dollars for a greatly increased armament program.<sup>59</sup> Mr. Roosevelt outlined a plan which called for 50,000 planes a year. In support of the suddenly expanded program, he pointed to what was at that moment taking place in

<sup>57</sup> *New York Times*, June 2, 1940, p. 11.

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*, May 17, 1940, p. 10.

western Europe. Although the sole theme of this message was the serious threat then developing and the need for the utmost effort on the part of the United States, he did not mention compulsory military service.

A few days later a news dispatch reported that an army officer, who requested that his name be withheld, had expressed the opinion that the American people were about ready for compulsory military service.<sup>60</sup> Two days later it was revealed that the Military Training Camps Association, at a meeting in New York City on May 22, had approved a resolution urging immediate adoption of compulsory military training by the Federal Government.<sup>61</sup> The Military Training Camps Association was an organization that had grown out of the Plattsburg Movement in the first World War. Organized in 1915, the Association had continued after the demobilization following the Armistice in 1918; it had advocated summer camps for military training of young men of high school and college age, and this provision, drafted by Colonel John McA. Palmer, had become the basis of the Citizens' Military Training Camps program. Since 1931, the Military Training Camps Association had acted as a semiofficial auxiliary to the War Department.<sup>62</sup> Some of its members had decided—on the day before Germany invaded the Netherlands—that greater recruitment of man power was imperative and had called a meeting of about one hundred men as a national emergency committee to set the movement underway. It was the meeting of this committee that the *New York Times* reported on May 23, 1940. Mr. Grenville Clark, a New York attorney, was chosen as the chairman of this emergency committee and also designated to help in the drafting of a bill to put its recommendations into effect. On May 26, Mr. Clark asked for compulsory training to provide three million soldiers within a year. He stated that this step was

<sup>60</sup> *Ibid.*, May 21, 1940, p. 18.

<sup>61</sup> *Ibid.*, May 23, 1940, p. 1.

<sup>62</sup> Hearings before the Senate Committee on Military Affairs on S. 4146, 76th Cong., 3rd Sess., July 3, 4, 10-12, 1940. 400 pages. p. 8.

the inevitable corollary of a force of 50,000 planes asked for by President Roosevelt.<sup>63</sup> In the ensuing days the press carried accounts of the expanding activities of the Military Training Camps Association in its drive forward. A release by the American Institute of Public Opinion indicated that national sentiment as of June 1, 1940, had taken a strong surge toward compulsory training. The poll now stood at 50 per cent for and 50 per cent against, a gain of more than 10 per cent over the figures of October, 1939. The trend was reflected in Congress when on June 4, a subcommittee of the Senate Appropriations Committee attached a rider to the Relief Appropriation bill, authorizing the "noncombatant" military training of Civilian Conservation Corps enrollees.<sup>64</sup>

Throughout all of this activity the White House remained silent. Official comment had not been forthcoming from Congress either, although individual members had expressed themselves on both sides of the question. Commenting on this situation on June 5, Arthur Krock termed the attitude of both Congress and the President toward selective service, "cool." Speaking of the sentiment encountered by reporters, he wrote, "Their impression, fortified by the total silence of the White House on this essential section of defense program, is that unless Congress remains in session no provision for selective service of young men will be made until after the elections if at all."<sup>65</sup> This would be true, he said, in spite of General Marshall's statement that there was a "tragic shortage" of manpower. The next step came on June 7, when the *New York Times* printed a vigorous editorial favoring conscription, for the following day at his press conference, in reply to a question, the President indicated that he had read part of the editorial and termed it "most interesting" but declined to commit himself on the program proposed.<sup>66</sup> Non-committal comments regarding the edi-

<sup>63</sup> *New York Times*, May 26, 1940, p. 12.

<sup>64</sup> *Ibid.*, June 5, 1940, p. 17.

<sup>65</sup> *Ibid.*, June 5, 1930, p. 24.

<sup>66</sup> *Ibid.*, June 8, 1940, p. 1.



torial were also reported from Secretary of War Woodring, Secretary of Agriculture Wallace, Speaker Rayburn, and the chairmen of the military affairs committees of both houses.

Whether or not the President's ambiguous comment could properly be interpreted as an endorsement of compulsory training, the record of the first three weeks in June indicates a steady growth of public sentiment in that direction. No doubt a large part of this awakened interest was the product of the aggressive campaign pursued by the Military Training Camps Association with the wholehearted support of such important papers as the *New York Times*. Without a strong lead from the White House the public was rapidly making up its mind and was actually ahead of the President on this particular issue.<sup>67</sup> A survey by *Editor and Publisher* during the first half of June showed overwhelming sentiment among newspaper editors throughout the country for compulsory training.<sup>68</sup> Many prominent figures added their voice to the swelling chorus. President Conant of Harvard so recorded himself on June 12;<sup>69</sup> President Dodds of Princeton urged immediate action over a nation-wide radio network on June 14.<sup>70</sup> In a ringing preparedness speech on a nation-wide broadcast, H. L. Stimson called for the immediate adoption of compulsory training as one of seven steps toward national defense.<sup>71</sup>

At his press conference on June 18, President Roosevelt said he would soon recommend to Congress "a comprehensive program calling for some form of universal compulsory government service." He was vague as to details but said that he was thinking of three possibilities: actual service with the Army and Navy; a behind-the-lines army of uniformed communication

<sup>67</sup> In fairness to Mr. Roosevelt it must be pointed out that for three years he had striven to awaken the American people to the threat then developing in Europe. In a sense he had kindled the fire that was now burning so brightly.

<sup>68</sup> *New York Times*, June 16, 1940, p. 13.

<sup>69</sup> *Ibid.*, June 13, 1940, p. 18.

<sup>70</sup> *Ibid.*, June 15, 1940, p. 10.

<sup>71</sup> *Ibid.*, June 19, 1940, p. 17.

and aviation technicians; and a non-combatant and non-uniformed supply of industrial technicians. He told his listeners "that he may have spoken hastily in giving his sanction to compulsory military training as a general policy." He explained that he had been thinking of military training in the broader sense when he had endorsed the *New York Times* editorial.<sup>72</sup> Governor Landon did not overlook this bit of presidential hedging. Accusing Mr. Roosevelt of using "weasel words" he demanded to know just what kind of training he did favor.<sup>73</sup>

A selective service bill was introduced by Senator Burke of Nebraska on June 20, 1940.<sup>74</sup> The identical bill was introduced in the House the following day by Representative Wadsworth of New York.<sup>75</sup> Amid expressions of approval of the bill from members of both houses, the chairmen of the military committees of the Senate and the House announced hearings. Except for Senator Burke's statement that the bill was "entirely in line with the President's desires," executive attitude was unrepresented.

The political possibilities of conscription seemed to awe both parties in spite of the assurance of the Gallup Poll on June 23 that sentiment was still holding firm with 64 per cent being for and 36 per cent against. The Republican platform adopted at the National Convention on June 26, did not mention the subject.

Hearings on the selective service bill got under way on July 3, 1940.<sup>76</sup> When Senator Burke who had introduced the bill was called upon by the chairman he said that he would not discuss it but would call upon the different witnesses who were qualified to explain it and asked that Mr. Grenville Clark be the first to

<sup>72</sup> *Ibid.*, June 19, 1940, p. 10.

<sup>73</sup> *Ibid.*

<sup>74</sup> S. 4164, 76th Cong., 3rd Sess.

<sup>75</sup> H. R. 10132, 76th Cong., 3rd Sess.

<sup>76</sup> Hearings before the Senate Committee on Military Affairs on S. 4164, 76th Cong., 3rd Sess., July 3, 5, 10-12, 1940. 400 pages.

appear.<sup>77</sup> According to Mr. Clark, the bill, known throughout the proceedings as the Burke-Wadsworth bill, was the work of many persons.<sup>78</sup> He named no less than twenty-five who participated in its formulation, and added that there were others whose share was perhaps as great. Among those mentioned were: General John McA. Palmer, Colonel William J. Donovan, George E. McMurty, Lewis W. Douglas, and Judge Robert P. Patterson. As if he wished to distinguish it from the type of measure suggested vaguely by the President sometime before, Mr. Clark took pains to point out that this was a strictly military bill, having nothing to do with industrial conscription or vocational training. The hearings were comprehensive, ranging over all aspects of compulsory military training. Of the 52 persons appearing before the Senate committee twenty-odd represented various religious, youth, and peace organizations. Almost half of the testimony was given by those who appeared in opposition to this measure or any measure requiring compulsory military service.

Hearings were also held intermittently by the House Military Affairs Committee from July 10 until the middle of August.<sup>79</sup> Among the most interesting witnesses was Major Lewis B. Hershey, executive officer of the Joint Army and Navy Selective Service Committee. He explained that this committee had been established by the joint action of the Army and Navy in 1926 to prepare plans for general conscription in case of war and continued, "The part of this law (sic) that has to do with

<sup>77</sup> Hearings, p. 5. Why did Mr. Burke introduce this bill? He was not a member of the Military Affairs Committee, he had not been active in military matters, and he did not pretend any unusual grasp of the subject. This coupled with his lack of harmony with the New Deal, soon to be emphasized by an open break, constitutes the chief flaw in the theory that Mr. Roosevelt was the force behind the conscription bill.

<sup>78</sup> Hearings, p. 8.

<sup>79</sup> Hearings before House Committee on Military Affairs on H. R. 10132, 76th Cong., 3rd Sess., July 10, 11, 24-26, 30, 31, August 2, 12-14, 1940. 655 pages.

organization is identical with the plans which we have worked on through the years." <sup>80</sup>

Mr. Roosevelt was not yet ready to commit himself. At his press conference on July 9, he said that the Burke-Wadsworth bill was "being mulled over," but made no other comment except to deny that the idea of training for non-military activities had been abandoned. <sup>81</sup> On the same day the Gallup Poll showed that 52 per cent of the men between the ages of 21 and 25 favored conscription. <sup>82</sup> On July 10, the President sent a special defense message to Congress, asking for new appropriations, totaling \$4,848,000,000. Regarding conscription he said:

The foregoing program deals exclusively with material requirements. The Congress is now considering the enactment of a system of selective training for developing the necessary man power to operate this materiel and man power to fill Army non-combat needs. In this way we can make certain that when the modern materiel becomes available it will be placed in the hands of troops trained, seasoned and ready and that replacement materiel can be guaranteed. <sup>83</sup>

The *New York Times* headline reporting the presidential message stated that the President had endorsed selective service. This may have been true, but if so Mr. Roosevelt had suddenly lost his well-known facility in speaking clear, forceful English.

At this time there occurred a temporary interlude as the Democratic Convention opened in Chicago. The Democratic platform said nothing specific on conscription but contented itself with some vague generalities that might be interpreted to

<sup>80</sup> *Ibid.*, p. 113. This committee was composed of officers from the General Staff and Adjutant General's office of the Army, and representatives from the Navy, Marine Corps, National Guard and Specialist Reserve, with other specialists called in from time to time.

<sup>81</sup> *New York Times*, July 10, 1940, p. 8.

<sup>82</sup> *Ibid.*, p. 10.

<sup>83</sup> *Ibid.*, July 11, 1940, p. 10.

mean almost anything.<sup>84</sup> Anne O'Hare McCormick in discussing the Democratic platform observed, "They (the Democrats) will not go so far, however, as to declare for universal military service, although this policy is indirectly approved in the generalization that 'total defense is necessary to repel attack and that partial defense is no defense.'"<sup>85</sup> The President did not go even this far in his acceptance speech on July 18. Although he completely ignored selective service the omission is not quite so pointed for he restricted the speech to matters of a personal and general nature.<sup>86</sup> The same day Senator Burke announced his withdrawal from the Democratic party and his support of Wendell Willkie in the coming campaign.

The ten days following the Democratic Convention was occupied by the Senate committee in rewriting some of the provisions of the bill. Although important questions of policy concerning the length of service, age limits of draftees, and pay were yet undecided, no helpful sign emerged from the White House. The Gallup Poll now reported a 67 to 33 ratio in favor of conscription, but Mr. Willkie had apparently taken his cue from the master politician for he was reported as declining to make known his views on the matter. When challenged by Senator Wheeler to speak out he declined to comment.<sup>87</sup> On July 29, Mr. Roosevelt asked Congress for authority to call up the National Guard for a year's service, but once more passed up this easy opportunity to express himself on the draft bill then pending.<sup>88</sup> A note of what approached comedy appeared when a news story for July 31, reported that "Senator Sheppard, who spent the week-end as President Roosevelt's guest aboard the yacht Potomac, said he had a definite impression that the President

84 *Ibid.*, July 19, 1940, p. 4.

85 *Ibid.*, p. 6.

86 *Ibid.*, July 19, 1940, p. 2.

87 *Ibid.*, July 30, 1940, p. 14.

88 *Ibid.*, July 30, 1940, p. 1.

avored the Burke-Wadsworth selective service measure."<sup>89</sup> The situation had become so ridiculous that Arthur Krock was constrained to devote his column to the subject, "Presidential Politics and the Draft Bill." His comments deserve quoting:

Were Mr. Roosevelt not a candidate for re-election this year, he would probably by this time have given to the selective service proposal the more specific endorsement it needs to protect it from further emasculation.<sup>90</sup>

Krock expressed the opinion that Mr. Willkie would have given his views also if he were not a candidate. Among the reasons for Mr. Roosevelt's unwillingness to come out openly in favor of the bill at this time, Mr. Krock pointed out that both Wadsworth and Burke were New Deal opponents and suggested the dampening effect this must have upon the Democratic friends of conscription. Speaking of the lack of partisan animation behind the measure, he concluded:

The very fact that it was projected by private citizens and introduced, not by the administration which should have taken the lead in the matter, but by an anti-New Deal Senator and a Republican Representative should sufficiently demonstrate that the bill has no campaign purpose.

At his press conference the following day the President stated, "I am in favor of a selective training bill and I consider it essential to national defense," but he added that he would not endorse or submit a specific bill lest such action be interpreted as placing him in the role of "Mr. Dictator."<sup>91</sup> His explanation that he had become more careful about sending drafts of bills to Congress since 1933 was hardly convincing in view of the record on such cases as the holding-company bill, the undistributed profits tax bill, and the Supreme Court bill, to mention but a few outstanding examples. At this moment the Maloney amend-

<sup>89</sup> *Ibid.*, July 31, 1940, p. 1.

<sup>90</sup> *Ibid.*, August 2, 1940, p. 14.

<sup>91</sup> *Ibid.*, August 3, 1940, p. 1.

ment threatened immediate action on the draft issue by proposing to delay operation of the draft until January 1, so as to permit the volunteer system to be tried first. A word from the President would have served to scotch this threat.

On August 5, 1940, the Senate Committee on Military Affairs reported the conscription bill by a vote of 13 to 3.<sup>92</sup> Several important changes had been made. The 8 months' service clause had been changed to 12; the pay rate had been raised from 5 to 21 dollars a month; the age limits had been changed from 18-64 to 21-31. Debate opened on August 9, Senator Sheppard leading off. In his outline of the nature and purpose of the bill he did not refer to the administration. His lead was followed by succeeding speakers; the administration received no attention throughout the prolonged discussion. Senator Burke went into some detail on the origins of the bill. For the most part he repeated the already familiar account of the activities of the Military Training Camps Association. He also spoke of the Joint Army and Navy Selective Service Committee which had been reorganized and expanded in 1926 under authority granted in the National Defense Act of 1920. This committee, he said, had been actively engaged in working out the details of a conscription measure, basing their work on their studies of all modern experience with manpower drafts here and abroad. From this experience the joint committee had developed a bill. "Many of the ideas contained in that measure are embodied in the pending bill; in fact, it formed the foundation of the measure now before the Senate coming from the very best minds in the country so far as military policy is concerned."<sup>93</sup>

Debate in the Senate dragged along for two weeks with virtually everyone taking some part. In the meantime the final vote was drawing near and neither Roosevelt nor Willkie had yet offered their supporters a lead upon which they might depend. The Maloney amendment was the single most dangerous threat. By its terms the operation of the act would be delayed thus

<sup>92</sup> S. Report 2002, 76th Cong., 3rd Sess., August 5, 1940.

<sup>93</sup> *Congressional Record*, 76th Cong., 3rd Sess., p. 10132, August 12, 1940.

wasting precious months in the task of building an army. In his acceptance speech on August 17, Mr. Willkie stated, "some form of selective service is the only democratic way in which to assure the trained and competent man power we need in our national defense."<sup>94</sup> Whether this amounted to an endorsement of the Burke-Wadsworth bill was not clear. In an editorial on August 18, the *Times* praised Mr. Willkie for declaring his support of selective service despite the advice of timid politicians but the following day it was reported that the Senate still felt that it had received no guidance concerning the specific bill then under consideration.<sup>95</sup> On August 23, Krock again discussed the conscription bill, pointing out the political attractiveness of the Maloney amendment in delaying a decision until after the election. If, said he, the President and Mr. Willkie would speak out against this amendment it would remove this political weaseling, but he added that there had been no administration pressure against the amendment. He concluded. "If it passes for this reason, conscription will have been sacrificed for campaign purposes."<sup>96</sup>

Mr. Roosevelt may have read the papers. On the other hand he may have decided on the basis of other reasons that it was time to speak out. At any rate, the following day, in reply to a question directed to him during his press conference, he surprised everyone by asking for draft legislation within the next two weeks and opposing any delay in putting it into effect.<sup>97</sup> This forthright statement immediately cleared the atmosphere and the Maloney amendment was eliminated without further ado. A final amendment, the Overton-Russell proposal conscripting industry, occupied the Senate for two days more. It was hotly contested, and although the administration was not immediately identified with it, subsequent developments indi-

<sup>94</sup> *New York Times*, August 18, 1940, p. 33.

<sup>95</sup> *Ibid.*, August 18, 1940, P. IV, p. 6; August 19, 1940, p. 9.

<sup>96</sup> *Ibid.*, August 23, 1940, p. 14.

<sup>97</sup> *Ibid.*, August 24, 1940, p. 1.



cate that perhaps an undercover battle for its adoption had been waged. The large vote of 69 to 16 by which it was agreed to lends color to this possibility. After a fortnight of debate during which 510 pages of the *Congressional Record* were filled with fervid oratory the Senate approved the Burke-Wadsworth bill by a vote of 58 to 31 on August 28, 1940. Party lines were not significant.

As the House military committee reported its bill on August 29 by a vote of 20 to 4,<sup>98</sup> Mr. Willkie condemned the Overton-Russell industrial conscription amendment and called upon President Roosevelt to state his position.<sup>99</sup> When asked about the matter Mr. Roosevelt declined to discuss it, saying that now as in 1933 he would not discuss legislation pending before Congress. He said that Republicans were trying to drag him into a political discussion. When asked why he had not taken this position when he spoke out against the Maloney amendment the previous week he laughed but did not reply.<sup>100</sup>

A special rule set general debate on the conscription bill at not more than two days; full opportunity to offer amendments from the floor was provided for in the rule. Debate began on September 3. The differences between the House and Senate bill were not great. The House version placed the age limits at 21 and 45 in contrast to the 21 to 31 limits found in the Senate bill. The House bill had a conscription of industry provision that was considerably milder than that of the Senate measure. It would permit the War or Navy Departments to take over and operate plants on a rental basis in time of war, but did not provide the sweeping powers over industry which were given to the President in the Overton-Russell amendment. Vice-presidential candidate Wallace spoke out strongly in favor of industrial conscription as debate opened in the House. The chief controverted issues were those already mentioned. Debate was no less bitter than it had been in the Senate. Numerous amendments were of-

98 H. Report 2903, 76th Cong., 3rd Sess., August 29, 1940.

99 *New York Times*, August 30, 1940, p. 1.

100 *Ibid.*, August 31, 1940, p. 1.

ferred with an unusually large percentage of them being accepted.<sup>101</sup> Except for the Fish amendment deferring the operation of the draft provisions for sixty days in order to test the volunteer recruitment method first, the amendments were not accepted unless those handling the bill indicated their approval. This deferring amendment, however, though bitterly opposed by administration representatives, was approved 185 to 155 in Committee of the Whole and again, 207 to 200 in the House itself. The final vote on the bill on September 7, 1940, was 263 to 149. House consideration of the draft bill consumed 280 pages of the *Congressional Record*, much of this being occupied by extension of remarks not actually delivered on the floor.

After passing its own bill, H. R. 10132, the House cleared up the parliamentary situation by taking up the measure already passed by the Senate (S. 4146) amending it by striking out all after the enacting clause and substituting the text of the bill which it had just passed, thus sending both bills to conference. The conference report set the age limits at 21-35; the Fish amendment was dropped. Regarding industrial conscription the conferees accepted the House provision.

On September 13, the Senate approved the report, 47 to 25, after one half hour of debate; House approval by a vote of 232 to 124 came the same day, after a discussion lasting an hour. President Roosevelt signed the bill September 16, 1940. The selective service bill became law almost without benefit of executive exertion.

There is always the possibility that the hand of the Executive was more present in the construction of the draft bill and the drive for its realization than the reports of the day indicate. For reasons that are obvious when the approaching presidential election is kept in mind, the President may have seen fit to carry on his campaign for universal military training through others, keeping himself in the background. On this possibility at least two observations may be offered. In the first place, it is odd that

<sup>101</sup> Forty-odd amendments were offered from the floor by individual members. Of this number 15 were adopted.

he should have delegated the chief responsibility for guiding the bill through its hazardous journey to two individuals who had opposed him in almost everything else he had undertaken, and one of whom was a Republican in a chamber overwhelmingly Democratic. This would seem to be strange strategy when he could have called upon numerous trusted party wheel-horses in both houses who were known to be strongly in favor of conscription.

A second observation is prompted by the hypothesis that the President though strongly behind the draft bill was prosecuting his drive by indirection. Conceding this to be the case—that he was supplying the real impetus to the enactment of the draft in the picture of the emergency he had portrayed—such a technique, if it could justly be so-called, does not provide Congress with that kind of leadership that can be followed wholeheartedly. A body as large and as diversely constituted as Congress must be supplied with a clear, strong, and unmistakably definite beat if it is to follow the conductor with anything like unanimity. Several decisions on important matters of detail were left completely to the decision of Congress, because of the failure or unwillingness of the Executive to come out openly on one side or the other. This exhibition does not strengthen the position of those who argue that Congress had ceased to function as a vital force in the legislative process. In these recurrent periods of executive shyness Congress has frequently shown its inherent strength and resourcefulness; if the results are not always completely above reproach they must still be rated as better than would have transpired had the Congress followed the example of the President.

## NAVY LEGISLATION

### NAVY LEGISLATION BEFORE 1916

Important navy legislation since 1900 has dealt almost exclusively with ship construction. Beginning in 1916, Congress adopted the policy of passing authorization acts whereby a pro-

gram of construction for a period of years was given a statutory approval. The Naval Act of 1916 is, therefore, of transcendent importance in view of its precedent-setting significance. Similarly the Naval Acts of 1929, 1934, and 1938 deserve study because each of them has marked a new milestone in American naval expansion.

#### THE NAVAL ACT OF 1916

Prior to 1915 Wilson was not especially interested in matters pertaining to the armed services or to foreign affairs. During his first two years in office, as has already been indicated, he was engrossed in a domestic program to the virtual neglect of other matters. Throughout this period the official Democratic policy was definitely "small navy" in spite of the efforts of Secretary of the Navy Daniels who consistently urged the construction of at least two battleships in a year.<sup>102</sup> Wilson turned a deaf ear to the advices of Secretary Daniels and the General Board until well into 1915 when he suddenly grew attentive to the entreaties that had formerly left him cold. Colonel House returned from a European trip with tales of such disturbing developments that for the first time Wilson was convinced that America was in danger of being drawn into the war, and as a consequence for the first time turned his attention to matters of national defense. His biographer, Ray Stannard Baker, observes: "But it was not until July [1915] that in his judgment the accumulating evidence had become so convincing as to warrant positive action . . . There is no doubt that the President moved with profound hesitation and a tormenting sense not only of the futility of war but of the hazards of victory: nevertheless on July 21st he took his first great step, writing to Garrison and Daniels to draw up programmes for the development and equipment of the two arms of the service."<sup>103</sup> His directives

102 George T. Davis, *A Navy Second to None* (New York, Harcourt, Brace and Company, 1940), p. 117.

103 Ray Stannard Baker, *Woodrow Wilson, Life and Letters* (Garden City, New York, Doubleday, Page and Company, 1927), VI, 8. See also Josephus Daniels, *The Wilson Era* (Chapel Hill, University of North

to Secretary of War Garrison and Secretary of the Navy Daniels gave the latter the opportunity he had long hoped for and preparations were immediately begun for an ambitious program of naval expansion.<sup>104</sup>

The plan recommended by Secretary Daniels called for a program of continuous construction extending over several years. This had long been the dream of the General Board but conditions and public sentiment had never until now permitted any chance of realization. President Wilson endorsed the principle of continuous construction and made the Secretary's plans the basis of his request to Congress in his message of December 1915.<sup>105</sup> While the congressional committees were holding hearings on his naval program Mr. Wilson took an extended preparedness tour during the months of January and February, 1916. In a swing that took him as far west as Des Moines, Iowa, he delivered several speeches to arouse the American people to the danger which he was now convinced really threatened. The vigor of the President's warnings was not wasted for the House Committee on Naval Affairs reported a naval construction measure that envisaged a substantial increase even though it fell somewhat short of what he had recommended in his message.<sup>106</sup> He had asked for a five-year construction program with special emphasis upon immediate construction of two large battleships and two cruisers. As the bill was reported to the House by the Committee on Naval Affairs it provided for a five-year program embracing five battle cruisers, twenty submarines, four scout cruisers, ten destroyers, and three auxiliary ships, but omitted the request of Secretary Daniels for two dreadnoughts. The total appropriation for naval expenditures was 240 million dollars of which 160 mil-

Carolina Press, 1944), pp. 326-327; Howard White, *Executive Influence in Determining Military Policy in the United States* (Urbana, University of Illinois, 1925), pp. 243-245.

<sup>104</sup> Davis, *op. cit.*, p. 213.

<sup>105</sup> *New York Times*, December 8, 1915, p. 1.

<sup>106</sup> H. Report 743, 64th Cong., 1st Sess., May 24, 1916.

lion was for new construction.<sup>107</sup> A minority report filed by the eight Republican members of the committee criticized the bill for stopping far short of the needs of the country and recommended a program calling for eight capital ships.

The House began consideration of the navy bill on May 27, and passed it without any major modifications on June 2, 1916, the vote being 363 to 4. An amendment offered by the Republican minority calling for the "big navy" plan was defeated by the narrow margin of six votes, 183 to 189, many Democrats voting with the minority.

As the papers of June 3, 1916, carried news of the passage of the navy bill by the House, the headlines blazed forth with the news of the Battle of Jutland. Both sides suffered shattering losses, the British losing fourteen vessels including six cruisers and the Germans twelve. This gave impetus to those who favored more capital ships and Senator Tillman, chairman of the Senate Committee on Naval Affairs, let it be known that he would ask for two such ships.<sup>108</sup> But this was merely the beginning. As the implications of the Battle of Jutland began to be more fully realized, administration requests were greatly increased with the full approval of the Senate committee. On June 22, the Senate subcommittee voted unanimously for a five year program calling for the construction of 153 ships including: 10 battleships, 6 battle cruisers, 10 scout cruisers, 50 destroyers, 67 submarines, and 10 auxiliary ships. Out of this the authorization for the coming year of 1917 was: 3 battleships, 4 battle cruisers, 4 scout cruisers, 10 destroyers, 30 submarines, and 3 auxiliary ships.<sup>109</sup> The following day the subcommittee increased the 1917 authorization from 3 battleships to 8, but the administration was still not satisfied and on June 26 a conference between Secretary Daniels and the ranking members of

<sup>107</sup> *Ibid.*, also see the *New York Times*, May 19, 1916, p. 1, and May 25, 1916, p. 1.

<sup>108</sup> *New York Times*, June 22, 1916, p. 4.

<sup>109</sup> *Ibid.*, June 23, 1916, p. 6.

the subcommittee was called. The subcommittee approved the administration proposal to speed up the entire program and reported a revised bill which provided for completion of the entire program in three years instead of the five originally contemplated. Under this new schedule the three-year program entailing a total cost of approximately half a billion dollars called for 10 battleships, 6 battle cruisers, 10 scout cruisers, 50 destroyers, 68 submarines, and 13 auxiliary ships, all to be undertaken before July 1, 1919. The 1917 part of the program amounted to 315 million dollars. This program was unanimously reported to the Senate on June 30, 1916.<sup>110</sup>

By the time the Senate got around to debating the naval appropriations bill on July 13, 1916, the excitement occasioned by the Battle of Jutland had subsided somewhat, but the opposition seemed convinced of the futility of their cause. Numerous attacks were made by such well-known opponents of naval expansion as Norris, La Follette, Reed, and Gronna, but the edge seemed to have been dulled. The Senate passed the bill on July 21, 1916, by a vote of 71 to 8, after beating off all attempts to reduce the appropriation for 1917 below the 315 million dollars reported by the committee.

Majority Leader Kitchin let it be known that he was going to fight the big navy bill that had just emerged from the Senate. Wilson countered by joining openly in the struggle for its approval. He called the members of the House Committee on Naval Affairs to the White House and urged retention of the schedule approved by the Senate.<sup>111</sup> After a conference deadlock of more than two weeks the House cleared the way for final agreement by voting, 283 to 51, to accept the Senate amendment providing for a total three-year program of 16 capital ships.<sup>112</sup> This issue settled, the conference committee lost little time in reaching a final agreement and the report was

110 S. Report 575, 64th Cong., 1st Sess., June 30, 1916.

111 *New York Times*, July 27, 1916, p. 4.

112 *Ibid.*, August 16, 1916, p. 1.

agreed to in both houses without further delay. President Wilson signed the naval appropriation bill on August 29, 1916, complimenting the Congress for the cooperation it had shown in carrying out his recommendations.<sup>113</sup> The combination of a strong sustained lead and a coincidental naval event in Europe was enough to gain congressional acceptance of administration desires with something left to spare.

#### NAVAL DISARMAMENT 1920-1921: THE BORAH RESOLUTION

The outstanding development in American naval policy during the post-war decade was the sponsoring and fostering of world disarmament. One of the immediately seized upon means of implementing this anti-armament sentiment was the navy construction program which had been authorized in 1916 but which was as yet largely unrealized. Throughout 1919 and 1920 there was an increasing amount of talk of declaring a naval holiday.<sup>114</sup> Secretary Daniels and the General Board of the Navy refused to be intimidated by this sort of talk. On December 13, 1920, Secretary Daniels made public the General Board's naval program for the coming fiscal year with the blunt statement that he opposed any naval holiday until the navy had been brought up to the strength authorized in the act of 1916. He asked Congress for an appropriation of 680 million dollars of which 184 million were for new construction already authorized.<sup>115</sup>

The immediate reaction was unfavorable. On the following day Senator Borah introduced a resolution proposing a disarmament conference to reduce naval armaments 50 per cent during the next five years.<sup>116</sup> Daniels continued to resist. On January 3, 1921, he expressed bitter opposition to the Borah Resolution and added that so far as he knew President Wilson had

<sup>113</sup> *Ibid.*, August 30, 1916, p. 6.

<sup>114</sup> Harold and Margaret Sprout, *Toward a New Order of Sea Power* (Princeton, Princeton University Press, 1940), p. 117.

<sup>115</sup> *New York Times*, December 14, 1920, p. 19.

<sup>116</sup> S. J. Resolution 225, 66th Cong., 3rd Sess.



no intention of calling a world disarmament conference.<sup>117</sup> The Senate Committee on Foreign Relations held hearings on the Borah Resolution and after eliminating the 50 per cent provision, reported it favorably on January 21, 1921.<sup>118</sup>

Two weeks later the House Committee on Naval Affairs reported the annual navy appropriations bill. In place of the figure of 680 million dollars requested by Secretary Daniels the committee recommended 395 million of which 90 million was for the program of continuing construction for the coming year. This bill was approved by the House by division vote of 208 to 9, on February 14, 1921. The Senate Committee on Naval Affairs, still dominated by several "big navy" advocates, reported the navy appropriations bill to the Senate on February 25, 1921, after adding 100 million dollars to the figure set by the House.<sup>119</sup> Borah immediately offered his amendment as a rider to the appropriation bill and had the satisfaction of seeing it approved 58 to 0.<sup>120</sup> Continued opposition prevented the appropriation bill from coming to a vote in the closing days of the Sixty-fourth Congress, and Congress adjourned without having provided for the needs of the Navy Department, present or contemplated.

President Wilson left office without commenting upon the battle which had convulsed the Senate and destroyed the navy appropriations bill. Mr. Harding took office without having committed himself on the controversy, although it was generally reported that he favored the Senate bill as it had been reported from committee. Early in the special session that followed Senator Borah reintroduced his resolution.<sup>121</sup> A week

117 *New York Times*, January 4, 1921, p. 4.

118 S. Report 709, 66th Cong., 3rd Sess., January 21, 1921.

119 S. Report 816, 66th Cong., 3rd Sess., February 25, 1921.

120 *New York Times*, March 2, 1921, p. 1. Borah had attempted to get a yea and nay vote on his resolution on February 24, during Senate consideration of unobjected-to bills, but when it became clear that it would precipitate an extended debate Senator Smoot objected to its further consideration.

121 *New York Times*, April 14, 1921, p. 3.

later the navy appropriations bill was also reintroduced just as it had passed the House the preceding session.<sup>122</sup> The House accorded the bill only a brief discussion and passed it without essential changes on April 28, 1921, the vote being 212 to 15.

While the bill was still in the Senate committee, President Harding invited Senators Poindexter and Hale, the ranking members of that committee, to the White House. After the conference these men stated to the press that the President was strongly against any attempt "to force the hand of the Executive."<sup>123</sup> This was enough to keep the Borah amendment from being attached to the appropriation bill as it came from the Senate committee on May 5, but Borah warned that he would carry his fight to the floor. The Senate committee had again increased the appropriations, this time to 99 million dollars in excess of the amount approved by the House. Debate on the bill opened on May 12 with only half a dozen Senators present. The following day Borah again offered his disarmament amendment.<sup>124</sup>

Debate continued to drag along with no prospect of an early termination and it looked as if the special session might be prolonged indefinitely. On May 17, Senator Poindexter suddenly reversed a week's stand and indicated that he would no longer oppose the Borah amendment. He refused to explain his action, and when questioned said. "I am not authorized to speak for the President," but the import of his announcement was not misunderstood.<sup>125</sup> With this thorny issue settled the Senate passed the appropriation bill on June 1, 1921, by a vote of 54 to 17. The total figure was 494 million dollars, an increase of 98 million dollars over the House bill. The final bill as agreed to in conference and approved by both houses placed the figure at 417 million dollars and retained the Borah amendment.

<sup>122</sup> H. R. 4803, 67th Cong., 1st Sess.

<sup>123</sup> *New York Times*, May 4, 1921, p. 1.

<sup>124</sup> *Ibid.*, May 14, 1921, p. 2.

<sup>125</sup> *Ibid.*, May 18, 1921, p. 1. The Borah amendment was adopted on May 25, 74 to 0.

After making several attempts to secure the removal or at least the watering down of the Borah amendment during conference, President Harding was forced to capitulate completely when it became clear that anything less on his part would endanger the passage of the appropriation bill. His letter to Majority Leader Mondell on June 29, 1921, stated, "I am vastly more concerned with the favorable attitude of Congress on this question than I am as to the form of expressing that attitude."<sup>126</sup> The House agreed to the Borah amendment on June 29, by a vote of 330 to 4.

#### THE NAVAL CONSTRUCTION ACT OF 1929

The next important act was the Act of 1929, sometimes known as the cruiser bill. Following the scrapping of battleships in accordance with the agreement reached in the Washington Conference, President Coolidge invited the nations of the world to attend a second conference for the limitation of cruisers. In the summer of 1927 a conference met at Geneva but no grounds for agreement were found and the conference adjourned without accomplishing anything. President Coolidge was disappointed and a little disgruntled. With characteristic brevity a White House statement of November 18 announced that the failure of the Geneva conference would have no effect upon the President's recommendations to Congress without giving any inkling as to what the recommendations would be.<sup>127</sup>

Scarcely more communicative was his annual message of December 6, 1927:

Everyone knew that had a three-power agreement been reached it would have left us with the necessity of continuing our building program. The failure to agree should not cause us to build either more or less than we otherwise should. Any future treaty of limitation will call on us for more ships. We should enter on no competition. We should refrain from no needful program.<sup>128</sup>

<sup>126</sup> *Ibid.*, June 30, 1921, p. 1.

<sup>127</sup> *Ibid.*, November 19, 1927, p. 2.

<sup>128</sup> *Ibid.*, December 7, 1927, p. 24.

The *New York Times* in commenting editorially on the President's statement observed, "He pledges himself to no plan . . . His present attitude is evidently that of waiting to see what Congress will propose and what bill or bills it will be necessary for him either to approve or to veto."<sup>129</sup>

However, there had been a change in presidential attitude. No matter how cryptically it might be stated Mr. Coolidge was now for the first time willing to consider a ship-building program of some magnitude. With some optimism, the General Board and the Secretary of the Navy went about preparing a program. On December 13, 1927, it was announced that the President had approved a billion-dollar navy bill covering a five-year program authorizing 4 battleships, 26 cruisers, 18 destroyers, 3 airplane carriers, and 5 submarines.<sup>130</sup> But something went awry for the next day under a headline reading "Protests Cause Cut in Navy Program," a dispatch stated:

President Coolidge, who, it had been said, had given approval to the program, let it be known that he had not approved it and that it would be altered. The White House declaration was received with the utmost surprise by those members of Congress who had gained the distinct impression that the draft shown them yesterday represented the President's views.<sup>131</sup>

The following day Representative Butler, chairman of the House Committee on Naval Affairs, introduced a navy construction bill.<sup>132</sup> It was different in several respects from that made public a few days previously. The biggest difference was the omission of the four battleships and the consequent reduction of total cost by roughly a quarter of a billion dollars. As Mr. Butler introduced this new bill authorizing a five year program totaling 725 million dollars it was "officially announced" that "The President has given his approval to the great proposal, which, it was said at the White House, does not, in the

<sup>129</sup> *Ibid.*, p. 28.

<sup>130</sup> *Ibid.*, December 13, 1927, p. 1.

<sup>131</sup> *Ibid.*, December 14, 1927, p. 20.

<sup>132</sup> H. R. 7359, 70th Cong., 1st Sess.

President's opinion, conflict with the financial policies of his administration."<sup>133</sup> An interesting feature of the bill was the clause authorizing the President to suspend all ship construction in the event of a disarmament conference. This clause was to be the center of much controversy during the next twelve months.

The public was out of sympathy with the program projected by the Navy Department. Congress, always more sensitive in election years, was sure that a sharp reduction would meet with favor. The House naval committee, on February 23, voted 20 to 1 to report a navy bill authorizing 15 cruisers and 1 airplane carrier at a total cost of 274 million dollars. The program was mandatory upon the President, requiring completion within three years, but a suspension clause authorized him to halt construction in the event of any armament treaty.<sup>134</sup> The President was reported to have been displeased with the committee's decision; he preferred to have the entire seventy-one ship program approved with no time limit imposed upon beginning or completion.<sup>135</sup> A bill embracing this program was introduced by Chairman Butler on February 28, and reported favorably three days later.<sup>136</sup> It was considered under a special rule permitting six hours' general debate on March 13, 1928, and passed by a vote of 287 to 58 on March 16.

This ended the forward progress of the bill for although the Senate committee reported it favorably in practically the same form in which it had passed the House,<sup>137</sup> Senator Borah and his associates once more prevented any Senate action on it before Congress adjourned.

The summer and fall of 1928 were taken up with the presidential campaign. Neither party made a definite issue of naval construction. On August 27, 1928, the Kellogg-Briand Pact

<sup>133</sup> *New York Times*, December 15, 1927, p. 10.

<sup>134</sup> *Ibid.*, February 24, 1928, p. 23.

<sup>135</sup> *Ibid.*, February 25, 1928, p. 1.

<sup>136</sup> H. Report, 70th Cong., 1st Sess., March 3, 1928.

<sup>137</sup> S. Report 988, 70th Cong., 1st Sess., May 3, 1928.

was signed in Paris thus adding one more problem that awaited the decision of Congress (in this case the Senate only) during the coming session.

In his final annual message to Congress President Coolidge renewed his request: "The bill before the Senate with the elimination of the time clause should be passed. We have no intention of competing with any other country."<sup>138</sup>

During December there was some dispute as to whether the cruiser bill or the Kellogg-Briand Pact should be considered first in the Senate. An agreement was reached that beginning January 3, 1929, the cruiser bill should become the unfinished legislative business of the Senate and the Peace Pact should become the unfinished executive business in open session. Under this arrangement the Peace Pact was accorded the major part of the Senate's attention until its ratification in mid-January. The Senate finally took up the cruiser bill for sustained discussion on January 23 and after prolonged debate passed it on February 5 by a vote of 68 to 12, retaining the three-year time limit in defiance of the President. The House concurred in some minor Senate amendments and President Coolidge signed the bill on February 13, 1929, without comment. Thus ended the struggle for the first navy construction bill since the World War, a struggle that had extended over most of two years.

The proposal had been initiated neither by the President nor by the Congress. It had been a part of the regular annual recommendations originating with the General Board and approved by the Secretary of the Navy. As it finally emerged from Congress some two years later its initial appearance it was much changed; these changes were wholly congressional in origin. Many of them not only did not come from the Chief Executive or any representative of the administration but were written in by Congress over the objections of the executive branch of the government. The imprint of Congress was unmistakable and much more easily identifiable than that of any other agency or individual.

## THE NAVAL CONSTRUCTION ACT OF 1934

"In the number of ships and expanded aircraft authorized, the Vinson-Trammell Act stands as one of the most significant measures in American naval history." Thus observes a careful student of naval legislation in this country.<sup>139</sup> He refers to the act which became law March 27, 1934. This piece of legislation was the end result of a prolonged series of alternate advances and retreats that began as far back as 1930. Coincident with periods of prosperity and depression, economy and spending philosophy, peace and war, Republican and Democratic strategy, with the attendant changes in personnel in all of the key positions both in administration and in Congress, the Vinson-Trammell bill came to fruition in early 1934 but its strands are made up of many threads which can claim no common source.

President Hoover was not especially active in matters pertaining to the armed services. His interests ran more heavily to other fields and for the most part he left matters of military and naval policy to the men he had appointed to these respective departments.

In December, 1930, Secretary Adams presented a navy bill which called for an expenditure of 75 million dollars for new construction.<sup>140</sup> A month later the House Committee on Naval Affairs approved the Secretary's recommendations with minor modifications but in spite of anonymous reports that Mr. Hoover was anxious to have the bill passed another month went by with nothing being done. A similar bill had meanwhile been reported in the Senate by Chairman Hale of the Senate Committee on Naval Affairs only to languish on the calendar. On February 12, 1931, Secretary Adams made a special trip to the Capitol to enlist the support of Speaker Longworth, but even this was not enough to blast the log jam of indifference and opposition that stood in the way of further progress.<sup>141</sup> The session closed leaving the bills undisturbed on the calendars.

<sup>139</sup> Davis, *op. cit.*, p. 361.

<sup>140</sup> *New York Times*, December 7, 1930, p. 22.

<sup>141</sup> *Ibid.*, February 13, 1931, p. 5.

In the middle of the summer of 1931, during the adjournment of Congress, reports from Washington told of Navy plans for a 55 million dollar construction program, said to have presidential endorsement.<sup>142</sup> Some time later Secretary Adams was quoted in favor of building the navy up to parity strength with Great Britain. According to the Secretary this program had the endorsement of the President.<sup>143</sup> As the time for the convening of the new Congress approached, reports indicated that sentiment for a stronger navy was on the upswing in that body. A conference of the leading figures of the naval committees of both houses reached agreement on the outlines of the policy which would be pressed during the coming session.<sup>144</sup> The conferees, Senators Hale and Swanson, and Representatives Britten and Vinson, agreed on a navy "second to none" and severely criticized the cut which President Hoover had already indicated that he intended to make in the navy program for reasons of economy growing out of the depression.

When Congress convened, Representative Vinson succeeded Representative Britten to the chairmanship of the naval committee as the Democratic party gained the control of the House. Vinson introduced a bill early in January, 1932.<sup>145</sup> It proposed a ten-year construction program costing 616 million dollars of which 18 million were to be spent during the coming year; a steadily increasing schedule provided for a peak expenditure of 90 million dollars in 1937. This program was known to be the work of the General Board but it did not have the approval of the President. The House Committee on Naval Affairs endorsed the Vinson bill but decided to delay reporting it to the House because of the "abnormal economic situation." An additional reason for delay was the approaching Geneva Disarmament Conference. President Hoover was the chief force be-

<sup>142</sup> *Ibid.*, July 5, II, 1, 1931.

<sup>143</sup> *Ibid.*, August 4, 1931, p. 1.

<sup>144</sup> *Ibid.*, December 2, 1931, p. 17. It will be noted that both parties were equally represented in this conference.

<sup>145</sup> *Ibid.*, January 4, 1932, p. 1.



hind this decision; he had persuaded the leadership of the Democratic House, particularly Speaker Garner, to cooperate with him in this delay.<sup>146</sup> Vinson sought unsuccessfully to gain Garner's support for early consideration of his bill. This concluded all progress for the present session.

In the Senate, however, the independence that has come to be regarded as characteristic of that body was about to manifest itself. Though this chamber remained Republican by a small margin it was to show less regard for the presidential wishes than the Democratic House. On February 23, 1932, the Senate Committee on Naval Affairs unanimously reported a ten-year ship-building program totaling 988 million dollars.<sup>147</sup> It included all of the items found in the House bill plus several new ones. This bill survived several attempts to block it. Surmounting the combined efforts of Senators Borah, Norris, McKellar, and King, Senator Hale won a preferred status for its consideration early in May, and after a surprisingly short debate the Senate passed it, 44 to 21, on May 6, 1932.<sup>148</sup> It provided for an expenditure of 786 million dollars if the building program was completed before 1936. If the program was extended to cover ten years it was to cost 988 million dollars, and should it cover twenty years the total cost would be \$1,195,000,000.

The House did not act on the Senate bill and another session of Congress closed without any naval construction act. Several factors entered into the failure of Congress to act but once again the single most important element was the opposition of President Hoover. His influence, negative though it was, can not be discounted. The final session of Congress during his administration marked time in anticipation of the changed attitude that would accompany the Roosevelt administration, for the President-elect was known to be sympathetic to the navy.

Representative Vinson conferred with Mr. Roosevelt several times during the interim between the election and March 4,

<sup>146</sup> *Ibid.*, January 26, 1932, p. 2.

<sup>147</sup> *Ibid.*, February 24, 1932, p. 1.

<sup>148</sup> *Ibid.*, May 7, 1932, p. 8.

1933. Early in February, during debate on the navy appropriations bill, he announced his intention of pushing his navy construction bill during the first session of the new Congress. He informed the House that Mr. Roosevelt would not oppose his program to bring the navy up to treaty strength.<sup>149</sup> He repeated this announcement shortly after President Roosevelt took office. Early in the special session Vinson submitted a 230 million dollar building program to the President. It had been worked out by the Navy Department and carried the approval of the Secretary of the Navy Swanson and Speaker Rainey. The program called for the construction of 20 destroyers, 5 light cruisers, 4 submarines, and 1 airplane carrier, the work to be spread over a three-year period with 46 million dollars to be spent the first year.<sup>150</sup> Mr. Vinson urged this program upon the President under the label of economic relief and reported that Mr. Roosevelt seemed impressed. The special session adjourned without any action on the Vinson bill, but the President allocated 238 million dollars from his three billion dollar relief fund for the construction of cruisers already authorized under the 1929 act. The Vinson bill went over until the following session and Secretary Swanson revealed his intention of asking the President to approve an additional grant of 77 million dollars for the modernization of battleships now overage.

Early in 1934, while Mr. Vinson was working on his bill preparatory to submitting it to the President, Representative Britten stole a march on him by introducing a naval construction bill asking for 101 ships at a total cost of 473 million dollars, to be completed by 1939.<sup>151</sup> Apparently Mr. Vinson did not wish the Britten bill to enjoy the advantages of priority for he introduced his own bill the following day without waiting to submit it to the President.<sup>152</sup> He admitted that he had not discussed it with the President but was sure that it had his ap-

149 *Ibid.*, February 23, 1933, p. 1.

150 *Ibid.*, April 1, 1933, p. 1.

151 H. R. 6575, 73rd Cong., 2nd Sess.

152 H. R. 6604, 73rd Cong., 2nd Sess.

proval. This bill was reported favorably by the House Committee on Naval Affairs by a unanimous vote on January 23.<sup>153</sup> It called for a total expenditure of 380 million dollars to be expended over a five-year period, and provided for the construction of 102 vessels, 95 of which were submarines and destroyers. Before the bill was considered in the House the committee at the request of Admiral Standley added an authorization for 1184 naval planes at a cost of an additional 95 million, bringing the total bill to 475 million dollars. This bill was approved by the House without a record vote after a brief debate. Numerous amendments aiming at reducing the size of the program were voted down by large majorities but the House did accept, over the protest of Chairman Vinson, an amendment by Thomas of Illinois requiring that half of the ships in each category except airplane carriers should be constructed by the government itself. Another amendment—this one accepted by Mr. Vinson—was the clause giving the President power to suspend the operation of the construction program in the event of a disarmament treaty.

The Vinson bill was reported to the Senate by Senator Trammell on February 2, 1934.<sup>154</sup> It came before the Senate on February 20 and was debated sporadically until May 6, when it was approved 65 to 18 after about eighty pages of debate. The by now familiar opponents were King, Nye, Wheeler, and McKellar. The bill as it passed in the Senate was not greatly different from the version approved by the House. The total authorization was now 750 million dollars but this figure is misleading because it includes 275 million to be transferred from Public Works Administration funds thus leaving the amount of new authorization at the House figure of 475 million dollars. Two additional amendments are worthy of note. A new clause required that 25 per cent of the airplanes should be built by the government if adequate facilities were found to be available. Likewise, the Senate inserted a new provision limiting profits on naval construction to 10 per cent.

153 H. Report 338, 73rd Cong., 2nd Sess., January 24, 1934.

The conference committee reduced the 25 per cent government construction requirement to 10 per cent and made certain other minor changes which were quickly accepted by both houses and the bill was signed by President Roosevelt on March 27, 1934. The largest peace-time navy bill in the history of the country, after many changes, most of which were in the direction of greater amounts, finally became a reality after almost five years of effort on the part of its sponsors. Party control had changed hands during the bill's struggle for existence against enemies whose party affiliations had been as heterogeneous as those of its sponsors. The sole constant throughout the struggle was the single-minded perseverance of the General Board and a few big navy men in each house. The one most important factor in the final success of the measure was the substitution of a pro-navy President for one who if not unfriendly was at best indifferent, but of only slightly less importance were the two naval committees which had been living with its various phases and forms for the better part of five years. The congressional contribution to the Vinson-Trammell Act of 1934 can not be lightly dismissed.

#### THE BILLION DOLLAR NAVY ACT OF 1938

##### THE SECOND VINSON ACT

The Second Vinson Act, in 1938, is significant chiefly as the beginning of a new era of naval construction in this country for it marks the beginning of an openly admitted two-ocean navy policy. In a sense this is less a change in former policy than a logical projection of the policy that was embarked upon in 1934.

The withdrawal of Japan from the London Naval Conference in January, 1936, warned those who followed international affairs that the era of disarmament had come to an inglorious close after some fifteen years of an existence that could never excite more than a most qualified enthusiasm from its advocates. Upon his return from the abortive conference Admiral William H. Standley urged the immediate expansion of our already

substantial construction program.<sup>155</sup> The Navy Department immediately began preparation of a horizontal increase of all items of naval strength. Although no immediate authorizations were requested by the administration, the execution of the program already authorized by the 1934 legislation was speeded up. In a letter to Chairman Taylor of the House Appropriations Committee, Mr. Roosevelt revealed that he contemplated an even greater speed-up than he had previously anticipated.<sup>156</sup>

In this atmosphere the House passed the largest annual naval appropriation bill in history on January 21, 1938, only to receive within a week a new naval construction bill calling for a twenty per cent increase in the total tonnage of the United States Navy built or then building.<sup>157</sup> The bill was accompanied by a special message from the President stating that the bill as introduced had been prepared in the Navy Department and represented official Navy opinion of the defense needs of the country. Mr. Vinson sponsored the bill in the House and lost no time in getting the legislative machinery in motion for driving it through in the briefest time possible.

The committee did considerable rewriting of the bill, adding several significant features, but no important modifications of policy were imposed. On March 4, 1938, by a vote of 20 to 3, the bill was approved.<sup>158</sup> It authorized a new five-year program of construction the cost of which was to total \$1,121,546,000 as compared with the President's proposal of \$1,083,546,000. In so many words the bill declared that this program was consonant with the announced United States policy of developing a two-ocean navy. Under a special rule permitting twelve hours of general debate with full opportunity to offer amendments the House began consideration of the Vinson bill on March 11, 1938, to continue until March 21, 1938, when the bill was passed by the one-sided vote of 294 to 100. In the course of the House debate, which covered 220 pages, the question of Ameri-

<sup>155</sup> *New York Times*, January 16, 1936, p. 1.

<sup>156</sup> *Ibid.*, December 29, 1937, p. 10.

<sup>157</sup> H. R. 9218, 75th Cong., 3rd Sess.

<sup>158</sup> H. Report 1800, 75th Cong., 3rd Sess., March 4, 1938.

can naval policy received full attention. The final vote gave full evidence of the agreement upon naval expansion. Like the debate which had preceded it the vote was completely non-partisan with party lines all but obliterated in the final roll call.

The Senate Committee on Naval Affairs opened its hearings on the Vinson bill early in April.<sup>159</sup> At the request of Admiral Leahy the Senate committee amended the House bill so as to increase the three battleships from 35,000 to 45,000 tons. This was in response to a rumor that Japan was then building new battleships of that tonnage. Likewise at the request of Admiral Leahy, the committee increased the tonnage of the two aircraft carriers from 15,000 to 20,000. With these changes and others of less importance, the committee reported the bill by a unanimous vote on April 18, 1938.<sup>160</sup> The total amount carried in the Senate bill was \$1,156,546,000, an increase of 35 million dollars over the House bill.

Senator Walsh opened the discussion on the bill on April 18, with a carefully prepared explanation of its salient features. Although debate was occasionally marred by sensational statements unsupported by fact it was for the most part confined to the subject under discussion and carried on on a high level. The entire question of American foreign policy which lay behind the implications of the present naval construction bill was subjected to a searching debate in which striking frankness was exhibited by both sides. This debate is well worth reading for its analysis of American foreign policy in its many ramifications.

Like the House, the Senate indulged in less amending of the bill than is usually the case. A few amendments were added but the bill was approved without significant modification on May 3, 1938, by a vote of 56 to 28, after some two hundred and fifty pages of debate. The conference committee had no difficulty in reconciling the differences between the two houses and the second Vinson bill became law May 17, 1938. It remained fundamentally the same bill that the Navy Department had

<sup>159</sup> Hearings before the Senate Committee on Naval Affairs on H. R. 9218, 75th Cong., 3rd Sess., April 5-13, 1938. 489 pages.

<sup>160</sup> S. Report 1611, 75th Cong., 3rd Sess., April 18, 1938.

recommended with the President's approval some five months before.

Navy legislation, as revealed in the history of the bills considered in this study, has not adhered to any single unwavering pattern. At times the President has been the chief force in the attainment of new legislation. Just as frequently he has played a neutral or a negative part. The naval committees of both houses have consistently advocated naval expansion but they have frequently been stalemated by an anti-navy sentiment in Congress that has consistently opposed new legislation, often successfully. This opposition, even if it might be forced to give way in the long run, could almost always count on delaying action for one or more sessions of Congress. The single most potent and consistently active force in the struggle for a larger navy has been the Navy Department itself. In his careful study, *A Navy Second to None*, Professor George T. Davis discusses this aspect of the Navy Department's activity:

Looking back over the years, it is clear that the naval hierarchy has played a decisive role in shaping American naval policy. Top-ranking officers have provided the grand plans for naval expansion. . . .

But throughout its history, the Navy Department has refused to limit itself in the process of policy making to giving advice on the technical questions of naval architecture, ship types, guns, and naval warfare. Its officers have not regarded themselves as advisers, who answered questions when asked. They have accepted the responsibility for seeing to it that the United States authorized and built the kind of navy which naval men believe it should have. Naval officers have, therefore, not found it incompatible with their function as professional public servants, to take the issue directly to the people and to employ a highly developed technique of "education" by means of the press and the numerous and influential military and patriotic societies of the nation.<sup>161</sup>

## CHAPTER VI

### AGRICULTURAL LEGISLATION

#### 1922-1938

IN the period from 1920 to 1933 there was almost continuous agitation for agricultural relief.<sup>1</sup> The sharp drop in agricultural prices that accompanied the readjustments of the post war period brought with it a multitude of mortgage foreclosures. Its effect was not confined to the farm community. All businesses which had drawn any considerable amount of their income from the patronage of the farm group were adversely affected. Many people became convinced early in the 1920's that the only solution for the relief of the agricultural depression was federal legislation. Just what form this legislation should take was a matter of wide disagreement. Suggestions ranged all the way from the compulsory lowering of railroad rates on agricultural commodities to outright subsidization of the producers of certain crops. Farm organizations were unanimous in their desire for national legislation but were badly split in their pre-

<sup>1</sup> Actually, agitation from the farm groups for greater federal attention to the needs of agriculture extended back much farther than 1920. One of the stated objectives of the Federal Reserve Act was the establishment of better credit facilities for the farmer, although the emphasis upon its benefits to business has tended to conceal this fact. When events proved that the Federal Reserve System did not satisfy the farmer's credit needs, Congress passed the Farm Loan Act of 1916. The food demands of the World War temporarily eased rural distress but the post war reaction was even more severe. It was at this time that the several farm organizations moved to Washington and set up permanent headquarters from which they might present their case with greater effect. Between 1918 and 1920 a series of crises which jeopardized the financial structure of the entire farming industry forced from Congress, over administration opposition, several temporary measures. These and other instances of federal credit legislation for the benefit of agriculture are discussed in the chapter on Federal Credit Legislation.

For an account of the early activities of the various farm organizations in Washington see Alice M. Christensen, "Agricultural Pressure and Governmental Response in the United States, 1919-1920," *Agricultural History*, XI, 34-43 (January, 1937).



scriptions of remedial measures. Some measures received sufficient support from the various groups to be written into law. Others, though debated at length and endorsed by some of the most powerful of the farm organizations, failed of passage. With the exception of the several McNary-Haugen bills which were debated during the period 1925-1928, all measures considered in the pages which follow actually became law. The proposals embodied in the McNary-Haugen bills were so important and so much a forerunner of the principles involved in the New Deal agricultural legislation that they can not be omitted.

### THE McNARY-HAUGEN BILLS 1924-1928

Farm relief legislation was the single most persistent issue confronting Congress throughout the years of the Republican prosperity spanning the administration of President Coolidge. No other subject prompted the introduction of so many bills. Among the dozens of farm bills introduced during this five year period were several different types of proposals. Those which came to be known as the McNary-Haugen bills soon gained prominence, and although other plans were introduced, the chief activity of farm organizations was concentrated upon them. In the effort to meet the criticisms which threatened to thwart their passage, however, these bills went through many revisions. The McNary-Haugen bill that was vetoed by President Coolidge in 1928, consequently, was something quite different from the original bill which bore that name. Nevertheless, the underlying objective was the same: to secure for agriculture a greater share in the benefits of the protective tariff. The mechanism for accomplishing this objective was the two-phase one of dumping surpluses abroad and assessing losses on the producers on a pro rata basis, in the form of an equalization fee.

This idea was not original with any individual congressman or congressional committee, nor for that matter with any of the great farm organizations. Its author was George N. Peek,

president of the Moline Plow Company.<sup>2</sup> This plan, commonly known as the "equalization plan," first appeared in 1922 in a pamphlet, "Equality for Agriculture," of which Peek and Hugh S. Johnson were the authors. Henry C. Wallace, then Secretary of Agriculture, became impressed with the idea. His report to President Coolidge on the wheat situation in November, 1923, contained what really amounted to an endorsement of the plan. Secretary Wallace later delegated a member of his staff, Charles J. Brand, to draft a bill along the lines of Peek's proposal. This bill, worked out by Brand in consultation with Peek, became, after some slight modifications by the congressional drafting service, the first McNary-Haugen bill introduced on January 16, 1924.<sup>3</sup> Between January, 1924, and April, 1928, when the final McNary-Haugen bill was reported in the Senate, no less than five bills bearing this name were considered by one or both houses.

H. R. 9033 was debated from May 20 to June 3, 1924, and defeated by a vote of 223 to 155. In 1925 H. R. 12348,<sup>4</sup> providing for a Division of Cooperative Marketing in the Department of Agriculture, was debated in the House from February 20 to February 26 and passed by a vote of 285 to 95. Referred to the Senate, the bill was reported with amendments on March 2, but died when Congress adjourned the following day. The McNary-Haugen bill (H. R. 12390, 68th Congress, 2nd Session) was effectively sidetracked during this session by the cooperative marketing bill which enjoyed presidential backing. When Mr. Coolidge chose to do so he did not find himself powerless to guide the deliberations of Congress even though the pressure from farm groups for the McNary-Haugen bill was potent.

<sup>2</sup> Hearings before the House Committee on Agriculture on Agricultural Relief, 68th Cong., 2nd Sess., February 2 to February 19, 1925; H. Report 631, 68th Cong., 1st Sess., May 2, 1924; J. D. Black, *Agricultural Reform in the United States* (New York, McGraw-Hill Book Company, Inc., 1929), p. 232.

<sup>3</sup> H. R. 9033, 69th Cong., 1st Sess.

<sup>4</sup> 68th Cong., 2nd Sess.

In 1926 H. R. 11603,<sup>5</sup> a third McNary-Haugen bill, considerably altered from previous ones, was debated in the House from May 4 to May 21 and rejected 212 to 167. The Senate devoted twenty-eight days to debating farm relief in connection with the proposal to establish a Division of Cooperative Marketing in the Department of Agriculture.<sup>6</sup> The substance of the McNary-Haugen bill was embodied in a substitute offered in lieu of H. R. 7893 by Senator Robinson of Arkansas. The Senate rejected this substitute 45 to 39 on June 24, 1927.

In 1927 the Senate debated S. 4808,<sup>7</sup> the newly revised McNary-Haugen bill, from February 3 through February 11, when it approved it by a vote of 47 to 39. Referred to the House, the bill was passed there, the vote being 215 to 175. President Coolidge vetoed the bill. In 1928 the final McNary-Haugen bill, S. 3555,<sup>8</sup> was debated for a week and passed on April 12, 53 to 23. The House considered it for a week and passed it with important amendments on May 3, 204 to 122. The conference report was approved by the House, 204 to 117, on May 14, and two days later the Senate approved it without record vote. President Coolidge again vetoed the bill on May 23, and the bill died when the Senate failed to repass it by the required two-thirds vote.

The President's role in connection with the McNary-Haugen bills was negative. The idea, originating with individuals interested in but not actually engaged in agriculture, went through its several stages of development exclusively via the legislative route. The influence of outsiders was constantly in evidence, but the effective forces finding their way into the everchanging language of the bill were the com-

<sup>5</sup> 69th Cong., 1st Sess.

<sup>6</sup> H. R. 7893, 69th Cong., 1st Sess. This bill was passed by both houses and became law in 1926.

<sup>7</sup> 69th Cong., 2nd Sess.

<sup>8</sup> 70th Cong., 1st Sess.

bined efforts of private groups and congressmen.<sup>9</sup> Within Congress, the prolonged struggle of the McNary-Haugenites for the votes to put over their proposal was aggravated by the conflicting interests of different farming areas. Party played no part, except incidentally. The schism was chiefly between wheat and cotton. The equalization fee which received almost unanimous support from the corn and wheat producing sections found little popularity among the producers of cotton who looked upon it merely as another excuse for adding to the cost of the food which they had to buy. The gradual decrease in opposition toward each successive McNary-Haugen bill reflected the swing of the southern representatives as they began to feel that the measure would benefit their interests. An important factor in this swing was the further drop in cotton prices which followed the unexpectedly large crop in 1926.<sup>10</sup>

#### THE AGRICULTURAL MARKETING ACT OF 1929

Farm relief was widely discussed but little clarified during the 1928 campaign. Both parties incorporated long planks on agriculture; the Republican plank endorsed the idea of a federal farm board but did not mention the equalization fee which had twice been drawn through Congress only to be struck down by a presidential veto. At first Herbert Hoover equivocated but he finally declared himself as opposed to the equalization fee, fav-

<sup>9</sup> Throughout this five year period the two agricultural committees were in almost continuous session. Much of their attention was devoted to hearings on agricultural relief. More than five thousand pages of testimony offered tangible evidence of the committee activity. Much of it is repetitious, and serves very little useful purpose other than providing a record of the committee's work. The several McNary-Haugen bills came in for the lion's share of attention but other plans such as the various forms of export debenture received an increasing amount of attention during the last two years.

<sup>10</sup> Arthur W. Macmahon, "First Session of the Sixty-Ninth Congress, December 7, 1925 to July 3, 1926," *American Political Science Review*, XX, 604-623 (1926). See especially pp. 612-616 for an account of the lack of consensus between the South and the Middle West regarding agricultural relief.

oring instead the creation of a stabilization corporation for ensuring a sounder price structure. With the Democrats, quite the opposite situation occurred. The platform in substance endorsed the McNary-Haugen bill without mentioning the equalization fee by name; a farm board was also favored. Governor Smith, however, was not willing to declare himself definitely in harmony with this plank. Originally wary of the fee idea, he finally came round later in the campaign to what might be termed a qualified acceptance of it. Farm relief was not a well-defined issue. Mr. Hoover announced immediately after his inauguration that he would call a special session of Congress in April to deal with both tariff revision and farm relief. In his inaugural address he again referred to the gravity of the farmer's plight but was no more specific than before about the kind of action that he would like to see taken.

The agriculture committees in both houses began sitting before Congress convened so as to have a bill in readiness. The committees proceeded to their task without definite information on what the new President desired in his requested farm bill. In opening the hearings, Senator McNary referred to Mr. Hoover's St. Louis speech of November 2, 1928, which proposed the establishment of a federal farm board with broad authority to act, and the creation of farmer-controlled stabilization corporations to handle the surpluses that were continuing to plague farm prices.<sup>11</sup> The chairman said that he had drawn up a bill carrying out his conception of Mr. Hoover's proposal and that it had been introduced in the short session which had just adjourned.

If the President gave no indication to the agricultural committee as to what he thought should go into the bill, he left no doubt in their minds as to his feelings about what should not go into it. His uncompromising opposition to all forms of production control, price regulation, and federal subsidy, was re-

<sup>11</sup> Hearings before the Senate Committee on Agriculture and Forestry, 71st Cong., 1st Sess., March 25 to April 12, 1929, pp. 840, p. 1.

flected in the attitude of the chairmen of both committees, during both the hearings and later debate. The statement included in the House committee report accompanying the federal farm board bill leaves no doubt on this score.<sup>12</sup> The report states, "we were also agreed that the basic trouble—at least so far as legislative help could be given—was upon the business rather than the production side of agriculture—the disposition of the product, not its creation." The report went on to say that in the opinion of the committee the election showed general opposition to such plans as the equalization fee, expert debenture, etc., and that therefore witnesses had been requested to avoid discussion of such measures since they "could not be enacted into law."

One of the most interesting witnesses was Dr. John D. Black, Professor of Agricultural Economics at Harvard University. Dr. Black appeared in support of what he called a domestic allotment plan. His testimony on the workings of this plan was carefully followed by a number of the members of both committees, although it was evident that the leadership was not thinking in terms of such a proposal for the bill before them. It is of interest, however, that many of the ideas which were eventually to go into the Agricultural Adjustment Act of 1933 were present in one form or another in the proposal Dr. Black was advocating in 1929. Black was not the originator of the domestic allotment idea. It had come to him from W. J. Spillman who had been in and out of the Department of Agriculture since the days of Secretary Houston during Wilson's administration. Spillman had long sought to devise some mechanism whereby agriculture could put its house in order. Throughout the middle twenties he wrote several articles for various farm journals in which he suggested the general outlines of a plan for allocating acreage among individual growers. These articles appeared in a small book, *Balancing the Farm*

*Output*, in 1929.<sup>13</sup> Dr. Black was impressed by Spillman's reasoning. Employing this general principle, he worked out a production control plan, with allotments of acreage, etc. It was this plan which he presented to the congressional committees.<sup>14</sup>

With the opening of the special session on April 15, 1929, both committees reported bills providing for the establishment of a federal farm board empowered to exercise rather broad authority in the field of marketing. The bills were substantially the same except that the Senate bill carried a section providing for a debenture plan upon the option of the board. This provision was forced through by a committee vote in spite of the opposition of the chairman reinforced by a letter from the President voicing his displeasure.<sup>15</sup> The similarity of the two bills, except for this section, rather tends to shed doubt on the statement of Mr. Williams of Illinois, a member of the House Agriculture Committee, relative to the origin of the House bill:

It may be of interest to the House to know, also, that the bill presented here is the work of the Committee on Agriculture, and for which that committee assumes full responsibility. It was not prepared on the outside and handed to the committee as have former bills. It represents the thought and judgment of the committee.

The President, as everyone knows, took the position that it was the constitutional duty of Congress to take the initiative in formulating legislation. The committee believed that the President was entirely right and made no complaint that the Department of Agriculture did not send up a prepared bill. Neither did the committee assume, as was asserted in some quarters, that the attitude of the President meant that he had no plan or definite ideas as to the legislation necessary to deal

13 W. J. Spillman, *Balancing the Farm Output* (New York, Orange Judd Publishing Company, 1927).

14 See Russell Lord, *The Agrarian Revival* (New York, American Association for Adult Education, 1939), p. 145; also E. G. Nourse, J. S. Davis, and J. D. Black, *Three Years of the Agricultural Adjustment Act* (Washington, D. C., The Brookings Institution, 1937).

15 S. Report 3, 71st Cong., 1st Sess., April 23, 1929.

adequately with the problem we were considering. The committee felt complimented that he gave it the credit for having the capacity and the good sense to draw a proper bill.<sup>16</sup>

The Agricultural Marketing Act of 1929 was drawn up by members of Congress, but its provisions were negatively determined by the President's wishes. In the House the members were seemingly glad to be able to vote for any measure which had some plausible chance of success and which the President was willing to sign. After a week of debate and offering of amendments, most of which were rejected with little consideration, the bill was approved in substantially the form in which it had been reported by the committee, by a vote of 366 to 35, April 25, 1929.

The struggle in the Senate was more severe. Members from the South and Middle West waged a well organized fight to retain the debenture provisions. They were able to prevail even in the face of the shrewd tactical moves of the Majority Leader and the chairman who did their best to carry out the wishes of the President. After three weeks of bitter debate the Senate approved the bill with the debenture provision still attached by a vote of 54 to 33, on May 14, 1929. There followed a month of bargaining during which both houses rejected attempts at compromise, until finally the Senate gave way and the bill with the debenture provision stricken out was approved on June 14, 1929. President Hoover's influence was definitely incorporated in the law, but the negative character of his influence was perhaps the outstanding feature of the whole process.

#### THE AGRICULTURAL ADJUSTMENT ACT OF 1933

By the early spring of 1932 the inadequacy of the Agricultural Marketing Act had become apparent. Although the President remained silent, both congressional committees again returned to the task of creating some effective form of relief for



agriculture.<sup>17</sup> Representatives of the three major farm organizations appeared; they stated that they had agreed upon a program but did not indicate what it was. Among the plans considered by the committees were the old familiar equalization fee, the export debenture, as well as plans proposing to guarantee the farmer the price of production by giving the Secretary of Agriculture power to set prices on the portion of the crop sold within the country. Several proposals to scrap the present Farm Board indicated that the great expectations which had accomplished its establishment had not been realized.

Mr. M. L. Wilson appeared before the Senate committee in support of a voluntary domestic allotment plan. This plan, which was an adaptation of the Spillman-Black idea, involved a processing tax, domestic allotments of certain specified crops, and called for the reduction of acreage with benefit payments as a means of bringing production within the prescribed limits. The committee seemed to show little interest in his proposal. He was dismissed rather abruptly after a few perfunctory questions. On May 25 Mr. Wilson also explained his proposal to the House committee. The committee listened attentively to his careful explanation and excused him without comment. The hearings continued to drag on throughout the spring and the farm organizations began to become desperate as Congress seemed about to adjourn without taking action. On May 4, 1932, they presented a composite farm relief bill which amended the 1929 marketing act so that the equalization fee, the debenture, or the domestic allotment plans could be used optionally by the Farm Board. This bill was immediately introduced into both houses by ranking members of the respective committees,<sup>18</sup> but the first session of the Seventy-second Congress adjourned without taking action.

<sup>17</sup> Hearings before the House Committee on Agriculture on farm relief, 72nd Cong., 1st Sess., January-May 1932; Hearings before Senate Committee on Agriculture and Forestry, on farm relief, April 26-29, 1932. 219 pages.

18 H. R. 11866 (Fulmer) and S. 4536 (McNary), 72nd Cong., 1st Sess.

The growing acuteness of agricultural distress was mirrored in the Republican Platform of 1932. Its farm plank approved, "any plan which will help to balance production against demand and thereby raise agricultural prices . . ." Neither the Democratic Platform nor the candidate went any further than this if, indeed, they went as far. Certainly, there was no explicit endorsement of production control, although Mr. Roosevelt did publicly approve some of the principles of the domestic allotment plan which had begun to compete with the idea of an equalization fee as a method of meeting the farm problem.

Shortly following the election, the House committee again began to hold hearings as the final session of the Seventy-second Congress got underway.<sup>19</sup> Before it was a proposal that had the support of the conference of farm organization leaders which had met in Washington to consider a course of action. The bill, drafted by Frederic P. Lee, counsel for the farm organizations, and Allan H. Perley, Legislative Counsel for the House, under the direction of the farm organizations, was entitled the Agricultural Adjustment Act. It provided for a processing tax, acreage reductions, and benefit payments upon the basis of a parity price. It was not based upon the tariff as the former farm organization bill had been. This plan had been worked out at a series of conferences at which two representatives of President-elect Roosevelt—Henry Morgenthau, Jr., and Rexford G. Tugwell—had been present. Mr. Lee, when asked whether the President-elect approved of the plan, said that he believed so but that he had seen no direct word of approval from Mr. Roosevelt.

M. L. Wilson appeared and pointed out the change in thinking which had taken place since his appearance before the committee the previous May. The former plan had been devised chiefly in terms of raising prices whereas in his opinion the present plan sought to benefit all industry with the farm benefit

<sup>19</sup> Hearings before House Committee on Agriculture on H. R. 13991, Agricultural Adjustment Relief Law, 72nd Cong., 2nd Sess., December 13-20, 1932. 406 pages.

being incidental. He indicated his preference for the present plan over the former because it was simpler and improved. His statement about the origin and development of the plan gives an account of its authorship:

Well this plan had been worked on by a number of different economists. Dr. Walter J. Spillman, of the Department of Agriculture, and Doctor Black, of Harvard, worked on it, and a number of people. I helped formulate it into a legal proposal, and that grew into something else, and that into something else, and then this summer, after receiving a great many letters and criticisms and all of this kind of thing, it grew into something else. I have not considered the proposal that I presented especially before the committee as my plan or something that was hard and fast. It has grown and changed and been simplified.<sup>20</sup>

From these hearings came the H. R. 13991 which passed the House on January 12, 1933. The bill went to the Senate and was referred to the Senate Agriculture Committee which held hearings on it from January 25 to February 6, 1933. By this time the enthusiasm of the Farmers Union for the measure had cooled somewhat. Mr. Simpson, president of that organization, testified that his group opposed acreage reduction and objected to the proposed method of price determination, but in lieu of something better they would support the present bill.

A comment that was later to be looked back upon as significant was that of Mr. O'Neal, president of the American Farm Bureau Federation. In response to a question from Senator Thomas of Oklahoma, Mr. O'Neal replied, "The conference (of agricultural organizations) I speak of agreed definitely on reducing the amount of gold in the dollar about 30 percent, as our definite program."<sup>21</sup> Congress adjourned before any action was taken on the House bill. Thus the problem of a farm program was left up to the incoming administration. For this and other purposes, the Seventy-third Congress was convened in special session on March 9, 1933.

<sup>20</sup> *Ibid.*, p. 151.

On March 16, 1933, President Roosevelt presented his agriculture bill to Congress, accompanied by a brief message. According to the President's own words, the bill, which had been drafted under the direction of his immediate advisers, was "frankly an experiment" and he gave assurance that if it failed to work he would be the first to acknowledge this and recommend its abolition. The bill, H. R. 3835, though it had the support of most of the leading farm organizations, did not meet with the approval of some of the congressional leaders. Representative Marvin D. Jones, chairman of the House Committee on Agriculture, was so much opposed to the crop control provisions that he refused to sponsor the bill. He did not, however, oppose it when it came on the floor of the House for debate. The House committee did not hold hearings on the newly introduced bill. After making a few minor changes it reported the bill out on March 20.<sup>22</sup> Over considerable opposition, a special order limiting general debate to four hours was approved; the rule permitted no right to offer amendments. Debate was later extended an additional hour and a half so that total time allowed for discussion in the House was five and one half hours. This time was shared by sixty-five representatives who participated in debate, not taking into consideration those who confined themselves to the asking of questions. The average time allotted to a member was five minutes, only three having as much as fifteen minutes to present their views; many had to be content with an allowance of three minutes or less.

After some five hours of perfunctory debate the House approved the bill by a vote of 315 to 98 on March 22, 1933, and sent it on to the Senate. The Senate agricultural committee held hearings for a week on the House bill.<sup>23</sup> Secretary Wallace, Assistant Secretary Tugwell, Mr. Fred P. Lee, and Mr. Mordecai Ezekiel appeared in support of it. Most of the farm

<sup>22</sup> H. Report 6, 73rd Cong., 1st Sess., March 20, 1933.

<sup>23</sup> Hearings before Senate Committee on Agriculture and Forestry on H. R. 3835, 73rd Cong., 1st Sess., March 17, 24, 25, 27, 28, 1933. 351 pages:

organizations supported it also. The most important exception was Mr. Simpson, president of the Farmers Union, who opposed it and urged instead the passage of the McNary "three way" plan which had been considered during the previous Congress. Several members of the committee, including Chairman Smith could find no enthusiasm for the proposal before them, but because of pressure from the White House they yielded reluctantly after making a few minor changes. The report accompanying the bill as it went to the Senate reveals the resentment smouldering in the minds of some members at what they felt to be the dictatorial action of the administration:

The bill as reported is practically the same as the bill that came from the House with, perhaps, the important amendment eliminating sheep and cattle from the enumerated farm commodities that are so enumerated in the House text.

This bill, with the exception of part 1, title 1, was drafted by the Department of Agriculture and is practically unchanged from the bill as presented to Congress. Considerable hearings were had by the Senate Committee, but on account of the desire of the administration that no change be made the bill is presented to the Senate in practically an unchanged form except that there is added to it title 3 which gives an alternative to what is known as title 2.<sup>24</sup>

The bill passed the Senate, 64 to 20, Chairman Smith not voting, on April 28. During the eighteen days it had been before the Senate, many amendments had been added, but they dealt chiefly with matters of technical detail, such as modifying the base period for dark-fired tobacco. With a single exception the bill approved by the Senate remained in substance the bill which had been introduced in the House on March 16.

The one part of the agricultural bill that was not strictly administration in origin was the Thomas currency amendment. Throughout the committee hearings Senator Thomas had exhibited a persistent concern with currency management as

<sup>24</sup> S. Report 16, 73rd Cong., 1st Sess., April 5, 1933.

an important step in the amelioration of the farmer's position. His position reflected a segment of opinion that was rapidly gaining strength. During Senate debates this sentiment materialized in the form of several proposals none of which were within the program visualized by the administration. Faced with a surge of inflationary sentiment, and convinced that its chances of complete resistance were less than good, administration strategy dictated that it throw its weight behind the lesser objectionable of the proposals, thus escaping with as little damage as possible. For this reason the decision to favor the Thomas plan for permissive devaluation of the dollar as a means of defeating the Wheeler proposal which demanded mandatory free coinage of silver seems to have been made. The Thomas amendment, according to Raymond Moley's account, came into being under these conditions.<sup>25</sup> Although its exact form was determined by administration spokesmen, including Mr. Moley himself, its origin was definitely non-administration. Except for the Thomas amendment the agricultural relief act of 1933 bears the handmark of the administration. Yet, as the foregoing account demonstrates, in formulating its bill the administration was heavily indebted to a body of thought which had been urged upon the committees of Congress by agricultural specialists for almost ten years. Few of the concrete proposals which found their way into the final act had originated within Congress itself, but the incessant hearings of the previous decade had provided an excellent crucible. In this sense the congressional contribution was not inconsiderable.

### THE SOIL CONSERVATION ACT OF 1936

The invalidation of the Agricultural Adjustment Act<sup>26</sup> in early January, 1936, reopened the agricultural relief problem by throwing the whole question back into the lap of Congress.

<sup>25</sup> Raymond Moley, *After Seven Years* (New York, Harper and Brothers, 1939), pp. 156-161. For the legislative history of the Thomas Amendment, see p. 334 *infra*.

<sup>26</sup> *U. S. v. Butler*, 297 U. S. 1 (1936).

Secretary Wallace immediately called a conference of farm organization leaders to consider what measures should be taken to meet the emergency. This conference unanimously approved a seven-point program designed to accomplish the objectives of the previous act and circumvent the objections raised by the Supreme Court. Included among the features of the new program, which had been presented by Earl C. Smith, president of the Illinois Agricultural Association, were: soil conservation payments, broad discretionary powers for the Secretary of Agriculture, and a system of processing taxes entirely separated from the other control provisions.

The Senate committee held hearings on January 14, 1936.<sup>27</sup> Of the seventeen witnesses who appeared before the committee, all but one endorsed the seven-point program. The single exception, Mr. J. E. McDonald, State Commissioner of Agriculture of Texas, opposed any crop control plan, but two of the leading farm organizations of that state informed the committee that Mr. McDonald did not represent the views of the farmers of Texas. Throughout the brief hearing it was apparent that there was a marked contrast in the attitude of the Democratic leadership from that which had characterized the hearings on the agriculture adjustment bill three years before. When Senator McNary asked President Taber if his organization (the National Grange) was going to bring in a bill incorporating the seven suggestions, Senator Smith interposed, "Any suggestion that anyone in the Government, or outside, wants to make to the committee, speaking for myself as chairman, I will be very glad to have but this committee is thoroughly competent to write the bill after the suggestions are in, and I shall insist that they do."<sup>28</sup>

The new bill approached the question of farm relief indirectly by placing emphasis upon a soil conservation program. Al-

<sup>27</sup> Hearings before the Senate Committee on Agriculture and Forestry, 74th Cong., 2nd Sess., January 14, 1936. 82 pages.

<sup>28</sup> *Ibid.*, p. 18.

though it underwent extensive rewriting between original draft and final report, this principle continued to be the central feature. If the statements of members of the committee can be accepted, there seems to have been a genuine sharing of work between executive and legislative departments. The following versions give an impression of congressional activity that does not sound like mere rubber stamping of decisions already made elsewhere:

Mr. Smith. (Chairman of the Committee on Agriculture and Forestry) Mr. President, I think it is due the members of the committee that I should say that practically every member present at the meetings participated in the action of the committee. Since I have been chairman of the committee I have never known of an occasion where the framing of the terms of a bill was participated in by as many members of the committee as was true in this case.<sup>29</sup>

Mr. Hatch. I see many members of the committee present. They know that the committee worked day after day, and obtained the best advice possible, both from a legal standpoint, and from the standpoint of the Department of Agriculture, even calling the Solicitor General before us to ask him as to the constitutionality of the measure. . . .

The subcommittee met. We were offered the original bill; we raised our objections and suggested things which we believed would improve the bill. The bill was redrafted at the suggestion of the subcommittee. New features were included. The subcommittee voted to report the bill to the full committee. Still not satisfied, still mindful of his high duty and obligation, the chairman of the committee called the full committee into session and laid before it the report of the subcommittee, and then suggested that time be taken for each member of the full committee to study the bill as it had come back from the subcommittee. Action on the bill was deferred for that purpose, and then still in order that each Senator might have an opportunity to express himself, the chairman of the committee again called the committee into session. . . .<sup>30</sup>

<sup>29</sup> *Congressional Record*, 75th Cong., 1st Sess., p. 1565, February 6, 1936.

<sup>30</sup> *Ibid.*, p. 1584-5.



After ten days of Senate debate during which the questions of policy and constitutionality were rather fully considered, and numerous amendments were offered and accepted, the Senate approved the bill on February 15, the vote being 56 to 20. The vote was sectional although very few Democrats voted against—one or two from the East being the only exceptions.

Hearings were not held in the House but the bill was amended in committee and further amended during the brief debate. Although five hours had been allotted for general debate, the House members said what they had to say in slightly less than two. Sharp attacks were made by representatives of the dairy interests who feared that the new bill would encourage many farmers to turn to that industry. In spite of the vigorous opposition of Representatives Boileau, Tarver, and others, the bill was approved on February 21, 267 to 97. Important House amendments broadening the Secretary's power met with administration approval and remained in the final bill which was agreed to by both houses on February 27, without record vote.

#### THE AGRICULTURAL ADJUSTMENT ACT OF 1938

The Agricultural Adjustment Act which became law on February 16, 1938, was the culmination of an effort that had begun almost a year earlier, and had continued practically uninterrupted throughout the intervening time. The Soil Conservation Act of 1936 had been the hurried answer to the Supreme Court decision of January, 1936. As such it had served to breach the gap until something more permanent could be worked out, but it was in need of repair and supplementation; furthermore, shifts in Supreme Court views since 1936 broadened the opportunities for more direct action. It was recognized both in administrative and in congressional circles that the demands of agriculture called for a comprehensive program that could be defended as a permanent fixture in the federal system. The need for additional legislation was conceded by virtually all segments of opinion. Opponents of production and price control looked forward to a relaxation of existing restrictions, while those who

felt that the conservation act had not gone far enough welcomed the opportunity to attain further gains in the new law. It was clear that both sides could not be satisfied in the new measure but hopes were high among all groups and sentiment was generally favorable toward the idea of change.

Of the many proposals, one of the most favored, at least by the articulate members of the administration, was that of crop insurance. Various persons in the Department of Agriculture had endorsed in general terms the idea of governmentally administered insurance as one step in the program of stabilizing production, hence prices. Senator Pope introduced a bill in the Senate (S. 1397) early in the first session of the Seventy-fifth Congress. A subcommittee of the Senate Committee on Agriculture and Forestry, under the chairmanship of Senator Pope, held hearings on this bill for a week in February and March.<sup>31</sup> The testimony brought out the fact that the initial move in this direction had been taken the previous September when President Roosevelt appointed a committee with Secretary Wallace as chairman to study the possibility of federal crop insurance and make a report to him. The Pope bill had been drawn in consultation with members of the staff of the Department of Agriculture and its contents followed closely the report made by this committee. This bill with very few changes was passed by the Senate but was not acted upon by the House, although the House Agriculture Committee did hold hearings on the problem of federal crop insurance late in May and early in June, 1937.<sup>32</sup>

Meantime Secretary Wallace was publicizing the idea of the "ever normal granary" as the best basis for a permanent agricultural program for America. Bills carrying out this proposal had been drafted under the supervision of expert counsel of the

<sup>31</sup> Hearings before a subcommittee of the Senate Committee on Agriculture and Forestry on Federal Crop Insurance, S. 1397, 75th Cong., 1st Sess., February Crop Insurance 25-27, March 1, 3, 9, 1937. 223 pages.

<sup>32</sup> Hearings before the House Committee on Agriculture, on General Farm Legislation, 75th Cong., 1st Sess., May 17-21, 25, 27, 28, June 8, 10, 1937. 230 pages.

American Farm Bureau Federation in consultation with experts and economists of the Department of Agriculture. Frederic P. Lee, former Legislative Counsel of the Senate, had been engaged by the Federation to represent it. With this measure as a basis both committees held hearings during May and June, 1937. The hearings were not particularly notable. The usual duplication of effort was in evidence. Of the eighteen witnesses appearing before the House committee, all but one had also appeared before the Senate committee.

Secretary Wallace appeared before both committees and testified at considerable length. He suggested several changes in the bill as it then stood and indicated that in its original form it was not the handiwork of the administration, and that their contribution had been consultative only.

On July 12, 1937, the President asked Congress for new legislation based upon the ever normal granary principle. Three days later a crop control bill drafted by the Farm Bureau Federation along the lines of that previously outlined was introduced in the Senate by Senators Pope and McGill.<sup>33</sup> On July 20, a competing bill, based upon the existing soil conservation plan, was introduced in the House by Mr. Jones, chairman of the House Agriculture Committee.<sup>34</sup> Neither of these bills made any further progress during that session, but both houses showed their good faith by approving a joint resolution stating that crop control legislation should be the first topic to be considered upon reconvening.<sup>35</sup> Congress adjourned on August 2, 1937.

In order to enhance the chances of obtaining crop control legislation in time for it to be applicable to the 1938 crop, President Roosevelt, on October 15, 1937, called a special session for November 15. From October 15 until November 1, a subcommittee of the Senate Agriculture Committee held hearings throughout those sections of the country where cotton, to-

<sup>33</sup> S. 2827, 75th Cong., 2nd Sess.

<sup>34</sup> H. R. 8505, 75th Cong., 2nd Sess.

<sup>35</sup> S. J. Resolution 207, 75th Cong., 2nd Sess.

bacco, corn, or wheat was the chief crop.<sup>36</sup> The purpose was to gather evidence from a large number of individual farmers regarding their opinions and desires on the subject of crop control legislation. Hundreds of farmers appeared before the committee. Three volumes totaling 4633 pages of testimony were taken.

With the opening of the special session crop control bills were reported favorably in both houses.<sup>37</sup> In the Senate, however, the original Pope-McGill bill had undergone extensive modification as a result of the hearings. The bill was not an administration bill. Although the two authors had worked in collaboration with the Department of Agriculture, there were provisions in the bill that did not have the approval of Secretary Wallace. As debate on the new bill began on November 23, Senator Smith again referred to the extensive hearings that had been held. As to the work of framing the bill he remarked: "I have collaborated with my colleagues on the committee in drafting a bill, which as nearly as may be, conforms to the wishes of those who produce the raw materials. . . ." <sup>38</sup>

Debate on the Pope-McGill bill was thorough. Senator McNary assumed the responsibility of subjecting the two sponsors, particularly Senator Pope, to a penetrating examination regarding its detailed workings. His questions bore witness to his extensive familiarity with the farm problem, and his searching analysis of the pending bill posed a challenging test to its framers. His questions were not always strictly unbiased and it is impossible to ignore a tinge of personal friction in the numerous exchanges that took place between the senators. Nevertheless, the interchanges did bring out many important points regarding the bill and the advantage was not all on one side. The bill was subjected to two weeks of intensive debate, during

<sup>36</sup> Hearings before a subcommittee of the Senate Committee on Agriculture and Forestry, pursuant to S. Resolution 158, 75th Cong., 1st Sess., October 15-November 1, 1937. 4633 pages.

<sup>37</sup> S. Report 1295, 75th Cong., 2nd Sess., November 22, 1937; H. Report 1645, 75th Cong., 2nd Sess., November 24, 1937.

<sup>38</sup> *Congressional Record*, 75th Cong., 2nd Sess., p. 266, November 23, 1937.

which many members took an active part. This was followed by two additional weeks of amending the bill, during which numerous changes were made in the wording, but the main provisions were not greatly changed. On December 17, the Senate concluded its labors by taking up H. R. 8505, the House agriculture bill, and amending it by striking out all after the enacting clause and substituting the Senate bill. This was adopted by a vote of 59 to 29.

While the Senate had been debating the Pope-McGill bill, the House had considered the Jones bill, and after some ten days of skirmishing over various amendments, had passed it on December 10, by a vote of 267 to 130. With the passage of the House bill in such amended form by the Senate a conference committee was set up and with this Congress adjourned on December 21, leaving to the conference committee the task of reconciling two almost irreconcilable bills.

On February 7, H. R. 8505, after being almost completely rewritten in conference, was reported back to both houses.<sup>39</sup> The House got to the matter first, voting on February 8, to consider the conference report under a special rule calling for four hours of debate and preventing the raising of any points of order against the bill. The rule was violently opposed by the Minority Floor Leader on the ground that the new bill was so long (120 pages) and technical and that the conference committee had gone beyond its jurisdiction in rewriting the bill. His position was fortified by the fact that the conference report which in itself took up sixty pages of fine print in the *Congressional Record* had appeared only during the morning of the day in which the matter came up for consideration. His appeal availed him nothing for the rule was adopted by a strict party vote, and the House proceeded immediately to consideration of the report. The statement of the House managers of the conference thus was of little value even though it did set forth rather clearly the changes that had occurred since the bill had been passed in the House. In cases such as this the normal pro-

cedure in the House is not geared to permit the individual member to take advantage of those sources of information upon which he could draw if he were only allowed a little more time in which to prepare.

In the Senate the same careless methods that have previously been noted marked the consideration of the conference report. On February 10, the bare report with no explanatory statement or supplementary information of any sort was presented. Senator Smith, in presenting the report, again seemed to be in one of his whimsical moods and it is impossible to tell from the Record whether he was in earnest or joking. It was apparently not his intention to make any explanatory statement, but upon the inquiry of Senator McNary as to the principle that was set forth in the bill as it now stood, he replied that its principle was mainly control, and that this was the desire of 95 per cent of the farmers. Upon being asked whether he favored the bill, he replied, "I now favor this bill, Mr. President, for the reason that the farmers have asked for it. It is not a question of my judgment."<sup>40</sup>

When asked whether the Department of Agriculture approved the conference report, he replied, . . . "the fact of the business is, I do not know what its attitude is and I do not care . . . I think the sooner this body assumes its responsibility and legislates according to its judgment and lets those whom we have appointed to administer it the better off this country will be."<sup>41</sup> But a moment later when Senator King wanted to know whose bill it was that was actually before the Senate in the conference report, Senator Smith made the following wholly confusing reply: "This is the original Secretary's bill; it is the original farmers' bill; and it is the bill the Senate has now." He added nothing more to clear up the patent contradictions in his several statements. Apparently the members of the Senate either chose to humor his whimsicality, or decided that it was useless to waste further effort in finding out the facts as to

<sup>40</sup> *Congressional Record*, 75th Cong., 3rd, Sess., p. 1766, February 10, 1938.

<sup>41</sup> *Ibid.*, p. 1767, February 10, 1938.

the bill before them. The Senate debated the conference report for four days and approved it by a vote of 56 to 31 on February 14, 1938. Two days later the Agricultural Adjustment Act of 1938 became law when it was signed by the President.

The relative influence of Executive and Congress in the Agricultural Adjustment Act of 1938 is difficult to assess accurately. From beginning to end there was more or less collaboration. There was no tendency on the part of the administration to dictate the exact provisions of the new bill, although many administration ideas found their way into its final draft. The original idea of an ever normal granary was pressed by the Secretary but there is no evidence that he was its inventor in the first place. The final bill was complex; besides being a crop control measure it contained also the beginnings of crop insurance, inasmuch as a system of wheat insurance was included. Neither of these features was new. Virtually every idea incorporated in the final act had been the subject of bills previously introduced. Determination of the specific details that were to go into the bill was retained for the most part in the hands of the committee. The function of the experts in the Department of Agriculture remained that of consultation rather than of formulation. Because of the failure of all farm organizations to present a united front, the bill actually was definitely approved by only one, to the exclusion of the others.<sup>42</sup> This shortcoming may be charged to lack of cooperation on the part of the farmers rather than to deficiencies on the part of the congressional committees.

Congressional debate on the farm act was more sustained and systematic than usual. More people took part, and more of those taking part confined their remarks to the subject matter of the bill. Not only was the broad question of policy extensively canvassed by both supporters and opponents of the measure, but questions of constitutionality were carefully discussed in the light of the several Supreme Court decisions that had been rendered since the Butler decision in early 1936. Furthermore,

<sup>42</sup> The American Farm Bureau Federation favored the bill.

through the participation of such experts in farm legislation as McNary and Capper in the Senate and Anderson in the House, all of whom opposed the proposal, many points were raised which added to the quality of the discussion. When it came to the details of the bill itself there were not many members who had the necessary knowledge. The mechanics of crop control are not less technical than are those of railroad or utility regulation. Here, the discussion was monopolized by those few individuals who had specialized in the intricacies of production controls. It is doubtful if this type of discussion contributes much to the enlightenment of those congressmen who are trying to make up their minds how to vote.



## CHAPTER VII

### FEDERAL CREDIT LEGISLATION FROM 1916 TO 1933

#### THE FEDERAL FARM LOAN ACT OF 1916

EXTENSION of government credit to private enterprise seems to have come about less through the passage of a few outstanding laws which have become landmarks than through the enactment of a series of lesser measures which in their totality have expanded the use of federal credit enormously. With the exception of the Reconstruction Finance Corporation Act, there have been almost no important statutes the sole purpose of which was opening up the federal purse to private borrowing.

The beginnings of federal credit were halting and uncertain. Compared with the sweeping nature of the Reconstruction Finance Corporation Act, as amended, this initial legislation scarcely deserves to be classified as credit legislation at all. Yet, at the time it was passed it was considered quite advanced, except by the few pioneers who even then were advocating out-and-out government loans. Furthermore, had it not been for such laws as the Federal Farm Loan Act of 1916, later more "radical" legislation might not have materialized as quickly as it did. These first laws were the entering wedge for a gradually but steadily expanding concept of government help to private enterprise, via the creditor route.

The credit-providing legislation of the past thirty years will be dealt with as a unit rather than divided into sections dealing with agriculture, business, banking, shipping, railroads, etc., because at bottom the issue has been a single one—should government credit be extended to this or that segment of private enterprise? Although at one time it is the farmers who are clamoring at the gates, and the next time the bankers or the exporters or the manufacturers, the problem facing the government is essentially the same.

The first modern instance of government credit legislation was the Federal Farm Loan Act of 1916.<sup>1</sup> This act was the culmination of several years of activity and was part of a much broader program for the general improvement of the conditions of the American farmer. In 1908 President Roosevelt had created the Country Life Commission to study the whole problem of agriculture and make recommendations for constructive legislation. Early in 1909 this commission, which had been set up by Mr. Roosevelt without legislative action, made its report to the President and he forwarded it on to Congress.<sup>1a</sup> This report mentioned but did not stress the value of establishing a system of cooperative credit upon which the farmer might rely. By 1911 the credit problem of the farmer had become more pressing with a corresponding increase of demand that the Federal Government step in and take a hand. President Taft suggested that perhaps a study of European agricultural credit practices might be helpful. Accordingly a commission was appointed to investigate and report. Its report was submitted to Congress late in December, 1912.<sup>2</sup> During the 1912 campaign, which occurred between the time the commission was appointed and the date of its report, all three major parties advocated rural credit.

On March 4, 1913, Congress authorized the President to appoint seven men, to be known as the United States Commission, to make a comprehensive study of the entire problem of agricultural credit and recommend appropriate governmental ac-

<sup>1</sup> See R. J. Bulkley, "The Federal Farm Loan Act," *Journal of Political Economy*, XXV, 129-147 (February, 1917) and George E. Putnam, "The Federal Farm Loan Act," *American Economic Review*, VI, 770-789 (1916).

<sup>1a</sup> S. Document 705, 60th Cong., 2nd Sess., January 23, 1909. The President accompanied the report with a request for an appropriation of \$25,000 to cover the cost of printing and distributing. Congress rebuffed him. Not only did it ignore his request but it passed legislation prohibiting the President from appointing additional commissions unless Congress so authorized. See Theodore Roosevelt, *An Autobiography* (New York, Charles Scribner's Sons, 1926), p. 416.

<sup>2</sup> S. Documents 966 and 967, 62nd Cong., 3rd Sess., December 5, 1912.

tion. This President Wilson did as one of his first official acts, and the commission headed by Senator Duncan U. Fletcher of Florida spent most of the following year in gathering data. Part of the commission made intensive first-hand studies of European conditions, incorporating much of this material in the final report which was made on January 29, 1914.<sup>3</sup> The main body of the report concerned itself with land-mortgage or long-term credit problems. It advocated establishment of a system of decentralized farm loan banks operating under a federal charter, but rejected the idea of direct government financial aid on the ground that it was unnecessary and unwise. To implement the suggestions of the United States Commission a draft bill was included with the report. This bill was introduced and became known as the Moss-Fletcher bill.<sup>4</sup>

The Moss-Fletcher bill had already been preceded by several other bills, however. In the Senate a farm loan bill by Senator Norris provided for a bureau within the Department of Agriculture to extend credit directly to farmers.<sup>5</sup> The Bathrick bill, somewhat similar in its provisions, had already developed a large following among the farm groups.<sup>6</sup> It proposed that the Federal Government borrow money at low rates (not more than 3½ per cent) and lend it to farmers direct or through farm-credit associations.

Joint hearings on rural credits were held during February and March by a subcommittee of the House and Senate Committees on Banking and Currency.<sup>7</sup> Senator Fletcher was one of the chief witnesses. In the introduction to his remarks he sketched his activity in support of better farm credit conditions, showing that he had been deeply engrossed in the entire farm

3 S. Document, 380, 63rd Cong., 2nd Sess., January 29, 1914. Three Parts.

4 H. R. 1285, 63rd Cong., 2nd Sess.

5 S. 4061, 63rd Cong., 2nd Sess.

6 H. R. 11897, 63rd Cong., 2nd Sess.

7 Joint Hearings before the subcommittees of the House and Senate Committees on Banking and Currency, 63rd Cong., 2nd Sess., February 16-March 18, 1914. 971 pages.

problem for several years.<sup>8</sup> Senator Fletcher told the committee that his study had convinced him that the Federal Reserve Banks then under consideration were conceived to aid the business man and because of their commercial paper requirements would not benefit the farmer who could not in the very nature of things meet their requirements.

Representative E. R. Bathrick of Ohio appeared in behalf of his own bill, terming it an agricultural bill in contrast to the Moss-Fletcher bill, which he characterized as a financial bill, in the formulation of which no farmer had had a hand. As a result of the dissatisfaction expressed with the Moss-Fletcher bill it was withdrawn, and replaced by the Hollis-Bulkley bill, introduced on May 12, 1914.<sup>9</sup> Drafted as a compromise measure to satisfy the more moderate among all groups, this bill provided that the Treasury might be required to purchase farm loan association bonds up to as much as \$50,000,000 a year if the normal market did not absorb them.

This bill was too radical to win the support of the administration. Representative Glass, suspiciously hostile to anything which might be inimical to the welfare of the Federal Reserve System which was just then getting under way, opposed it. He assured the President that it was not necessary inasmuch as the Federal Reserve Banks would extend credit on farm lands and, therefore, would provide all of the farm credit that was needed.<sup>10</sup> Wilson angered the subcommittee of the House and Senate Banking Committees when he omitted the farm loan bill from his program for the coming session,<sup>11</sup> but the opposition

8 It is cases of this kind that impress one so strongly with the enormous fund of invaluable information and understanding that exists in Congress upon almost every conceivable phase of life. These men who for some reason or other have become concerned with a particular activity have attained a degree of expertise that few persons in the administrative agencies can equal.

9 H. R. 16478, 63rd Cong., 2nd Sess.

10 *New York Times*, May 14, 1919, p. 8.

11 *Ibid.*, May 13, 1914, p. 1.

of the administration was too great a hurdle to be overcome and the bill was not reported out of committee.

Determined to get action on his measure some way or other, Representative Bulkley offered it during the following session as an amendment to the agriculture appropriation bill. In this form it was passed on March 1, 1915. A somewhat similar amendment had been accepted by the Senate. These efforts were dissipated when both amendments were struck out in conference only to be replaced by the familiar provision creating a joint committee to prepare and report to Congress a rural credit plan on or before January 1, 1916.<sup>12</sup>

The Joint Committee on Rural Credits divided into two sections. One under the leadership of Senator H. F. Hollis of New Hampshire devoted itself to land-mortgage loans, the other under Representative R. W. Moss of Indiana studied personal rural credits. Representative Glass, the chairman of the Joint Committee, was an *ex officio* member of both subcommittees. The group under Senator Hollis reported a bill, on January 3, 1916, that differed only slightly from the Hollis-Bulkley bill of the previous year. The bill was introduced in their respective houses by Senator Hollis and Representative Moss.<sup>13</sup> The Banking and Currency Committee reported the bill with some changes on February 15.<sup>14</sup> On March 4, 1916, before the Senate got around to its consideration, Senator Fletcher spoke at length in support of the bill.<sup>15</sup> On March 28, Senator McCumber dwelt on its shortcomings. He emphasized its failure to afford true relief to the farmer and asked that his own bill (S. 831, 64th Congress, 1st Session) providing for direct government loans to farmers be printed to follow his remarks.<sup>16</sup>

<sup>12</sup> Public No. 293, March 4, 1915.

<sup>13</sup> S. 2986 and H. R. 6338, 64th Cong., 1st Sess.

<sup>14</sup> S. Report 144, 64th Cong., 1st Sess., February 15, 1916.

<sup>15</sup> *Congressional Record*, 64th Cong., 1st Sess., pp. 3542-3551, March 4, 1916.

<sup>16</sup> *Ibid.*, March 28, 1916, p. 4998.

The Senate took up the Hollis bill on April 24, 1916. Debate covered more than one hundred and seventy pages of the *Congressional Record*, but the bill was not greatly amended. The almost universal appeal of farm credit legislation at this time was well illustrated by the 58 to 5 vote on May 4, 1916. Representative Glass reported the bill from the House Banking and Currency Committee on the following day, with an amendment in the form of a substitute in which were embodied many changes.<sup>17</sup> In general, the House bill was more liberal than the Senate version. Neither provided for the use of federal funds except in a very limited way. The House bill provided that the land banks to be established could be designated by the Secretary of the Treasury as depositories of federal funds. Moreover, the Secretary of the Treasury was also instructed to subscribe to the capital stock of the land banks in order to bring the total subscription up to \$750,000 in case private subscription was insufficient.

The House considered the bill under a special rule allowing six hours of general debate with full privilege of offering amendments. Debate in the House was more bitter than in the Senate. The insurgent group led by Representative Henry sought to write in a proposal obligating the United States Treasury to purchase farm loan bonds with a maximum figure set at \$50,000,000 a year. On May 12, this was rejected 81 to 19. The discussion in the House followed lines similar to that in the Senate; almost everyone favored some kind of farm credit and apparently believed that the present bill, imperfect

<sup>17</sup> H. Report 643, 64th Cong., 1st Sess., May 5, 1916. Two days earlier Representative Phelan for the House Banking Committee had reported another rural credits bill (H. Report 630, 64th Cong., 1st Sess., May 3, 1916) similar in substance to that reported by Glass. The report is of interest here because of a strongly worded minority report by Representative Charles A. Lindbergh proposing a system of Federal cooperative banks, the capital of which was to be subscribed, owned, and kept by the United States government. Thirty-nine agricultural credits bills were introduced during the first session of the 64th Congress, many of them, like the Lindbergh bill, proposing direct federal loans to agriculture. It is against such a background that the farm credit legislation of 1916 must be considered.

though it was, had less fatal weaknesses than any other that had yet been formulated. The criticism, therefore, although voluminous had no telling effect. Most of it came during the amendment stage during which dozens of amendments were offered but very few accepted. On May 15, 1916, the House indicated its awareness of the potency of the farm vote in an election year by passing the bill 295 to 10.

No radical changes were made by the conference committee. Representative Glass presented its report to the House on June 27;<sup>18</sup> after a brief discussion the bill was approved by a vote of 311 to 12. The Senate approved the report the following day without explanation or discussion; the vote was not recorded. The final step occurred on June 17, 1916, when President Wilson signed the bill, expressing gratification at being able to help the farmer.<sup>19</sup>

It seems apparent that the initial beginnings of farm credit, as they were embodied in the Farm Loan Act of 1916, came into being without the benefit of administration backing. In fact, the sole influence the Executive exerted was in the direction of limiting the scope of the initial congressional proposals. In spite of paying a certain amount of lip service to it, President Wilson did not actively support farm relief. It remained for Congress to fill the gap.

#### THE WAR FINANCE CORPORATION ACT 1918

The first major stride of the Federal Government into the lending business came as a war measure. Although the Federal Reserve System had as one of its chief objectives the facilitation of borrowing by business enterprise, it was unable to meet the needs arising from the unprecedented business boom that accompanied the entry of the United States into the war. Furthermore, each successive Liberty Loan tended to preempt the credit facilities of the banks to the point that industrial plants, public utilities, railroads, etc., could not obtain the funds to carry out their part of the war production program. The Fed-

18 H. Report 844, 64th Cong., 1st Sess., June 27, 1916.

19 *Commercial and Financial Chronicle*, CIII, 288 (July 22, 1916).

eral Reserve Banks could rediscount commercial paper but they could not lend money on stocks and bonds. A government agency with authority to supplement the lending power of our established banking facilities was the solution that the War Finance Corporation was created to provide. Actually, the corporation was created scarcely six months before the war ended; it never had an opportunity to demonstrate its value. Nevertheless, the War Finance Corporation Act was significant in that it was the progenitor and prototype of the Reconstruction Finance Corporation Act which was to become a major instrument of the Federal Government from 1932 on.

In January, 1918, when Secretary of the Treasury McAdoo announced that he intended to ask Congress to create a new super-credit corporation to supply needed funds to industry, he acted upon his own initiative and not upon the urging of Congress. Easing of credit by expanding the lending facilities of the country had not been widely discussed. The preceding September, Senator W. O. Calder of New York had introduced a bill liberalizing the conditions under which the Federal Reserve Banks might make loans,<sup>20</sup> but this bill had been buried in the Senate Finance Committee when the Federal Reserve Board had withheld its approval.<sup>21</sup> No other bill dealing with private credit needs had been offered in either house, nor had any member of Congress deemed it of sufficient importance to discuss on the floor.

On February 4, 1918, a War Finance Corporation bill, drafted in the Treasury Department at the direction of Secretary McAdoo, was introduced in the Senate by Simmons of North Carolina and in the House by Kitchin of North Carolina.<sup>22</sup> In spite of the banking character of the bill it was referred to the Finance Committee of the Senate and the Ways and Means Committee of the House because it contained some

20 S. 2908, 65th Cong., 1st Sess.

21 Hearings, before the House Ways and Means Committee on H. R. 9499, 65th Cong., 2nd Sess. February 18, 19, 1918, p. 23.

22 S. 3714 and H. R. 9499, 65th Cong., 2nd Sess.



minor tax provisions. There was some murmur that McAdoo had decided to by-pass the banking committees because of his uncertainty as to the wholehearted support of Representative Glass, chairman of the Banking and Currency Committee in the House. Both committees held limited hearings. Although the committees extended an invitation to anyone interested, the hearings attracted little attention. Except for representatives of some of the leading public utilities, the only persons appearing were spokesmen for the administration.

Senator Simmons reported the bill out of the Finance Committee on February 21, 1918.<sup>23</sup> Several changes had been made by the committee: the power to license security issues of \$100,000 or over was transferred from the corporation to a Capital Issues Committee to be appointed by the President with the consent of the Senate; the authority of the corporation to make loans direct to private industry was limited to "exceptional cases"; the power to appoint the other members of the corporation, originally vested in the Secretary of the Treasury with the consent of the President, was now placed in the President with the consent of the Senate. Other changes of similar import were made but the fundamental powers provided for in the original bill were not disturbed. Debate was opened on February 26. Senator Simmons explained the origin of the measure but assured the Senate that no word of it had escaped careful scrutiny. He reviewed the statements made by the several persons appearing before his committee and explained the situation that had prompted its appearance.<sup>24</sup>

There was some disposition to criticize the way in which the measure had been presented to Congress. Senator Gallinger of New Hampshire deplored what he termed the growing habit of the Senate to welcome bills already drawn up by some executive department. The better way in his opinion was for the President to inform the Congress what he desired and then for the bill to be constructed through consultation between the commit-

<sup>23</sup> S. Report 286, 65th Cong., 2nd Sess., February 21, 1918.

<sup>24</sup> *Congressional Record* 65th Cong., 2nd Sess., p. 2778, February 26, 1918.

tee and the department concerned.<sup>25</sup> Senate debate was not distinguished; although 117 pages of the *Congressional Record* were taken up by the discussion there was little to justify this much space. Few Senators seemed concerned with the extraordinary character of the power granted to the corporation. In fact, this point seemed to be taken for granted; there was little disposition on anyone's part to examine in any detail the philosophy of the new step contemplated; instead the discussion centered chiefly on minor amendments. The most important of these was that which deprived the Capital Issues Committee of power to prevent proposed issues which it disapproved.<sup>26</sup> This committee could issue a statement indicating its disapproval but possessed no sanction by which it could enforce its decision. The Senate approved the War Finance Corporation bill, March 7, 1918, 74 to 3, the dissenting votes being cast by Harding of Ohio, Hardwick of Georgia, and Sherman of Illinois.

The House Committee on Ways and Means made so many changes in the original bill (H. R. 9499) that it instructed Representative Kitchin to report out a new bill (H. R. 10608).<sup>27</sup> In presenting the bill, Mr. Kitchin called it a war measure that would not have been sanctioned by his committee in peace time. He explained in detail the theory behind the measure and related, point by point, the numerous changes that had been considered in committee.

During the course of debate in the House, bipartisan requirements were written into the provisions for the board of directors

<sup>25</sup> *Ibid.*, p. 3096.

<sup>26</sup> An informal Capital Issues Committee of three members of the Federal Reserve Board and some technical consultants had been created to discourage security issues not essential to the conduct of the war. This informal committee functioned from January 12, 1918 until May 17, 1918, when it was superseded by the new committee. See Woodbury, Willoughby, *The Capital Issues Committee and the War Finance Corporation* (Baltimore, Johns Hopkins Press, 1934), p. 29-30.

<sup>27</sup> H. Report 369, 65th Cong., 2nd Sess., March 9, 1918.

of the corporation and the securities committee. The total amount of bonds issuable by the corporation was reduced from four to two billion dollars. With numerous other changes of a minor character, the House substituted its bill in the form of an amendment for the Senate bill and passed the latter on March 21, 370 to 2. The conference committee compromised the corporation's borrowing power at three billion dollars; it struck out the bipartisan requirements imposed in the House but as a concession to the House increased the size of the Capital Issues Committee from five to seven.<sup>28</sup> A large number of other changes were made without in any way affecting the major outlines of the measure as it had originally been introduced. Both houses agreed to the conference report without a roll call and the President signed the bill April 5, 1918.

From beginning to end the War Finance Corporation was an administration measure; although both houses made significant changes in detail, the substance of the bill originated outside Congress and went through that body essentially unmodified.

#### THE REVIVAL OF WAR FINANCE CORPORATION 1921

With the Armistice in November, 1918, the feverish rush to expand production was abruptly halted. The War Finance Corporation was no longer needed to siphon new funds into rapidly mushrooming industry but its period of greatest usefulness was just beginning. Oddly enough an instrument that was fashioned to ease the financial bottle-neck of an incipient industrial boom made its greatest contribution as a brake on the severe deflationary trend that occurred in the post war years. When the momentum of the wartime production program began to slacken during the early weeks of 1919, Secretary of the Treasury Glass and War Finance Corporation Director Eugene Meyer, Jr., appeared before the Senate Committee on Finance and recommended that the War Finance Corporation be author-

<sup>28</sup> H. Report 448, 65th Cong., 2nd Sess., April 1, 1918.

ized to make loans to firms engaged in the export business. This was provided for in legislation of March 3, 1919.<sup>29</sup>

During the summer of 1920 Secretary of the Treasury Houston, who had never been in sympathy with the philosophy behind the War Finance Corporation, threw all the power of his office behind the effort to terminate its activities.<sup>29a</sup> He was confronted with the determined resistance of the corporation's director, Eugene Meyer, Jr., but in the end he succeeded in getting the board of directors on May 1, 1920, to pass a resolution of discontinuance. Meyer phrased the resolution so as to make it clear that the decision had not been voluntary on the part of the board of directors. It stated:

Resolved, That at the request of the Secretary of the Treasury, pending further action by this board, the making by the corporation of further advances for export purposes, except pursuant to existing commitments, be suspended.<sup>30</sup>

Meyer resigned from the board on May 25, 1920. The financial situation took a turn for the worse as 1920 wore on and the press began to reveal a steadily increasing demand for a revival of government financial aid. From October 15 on, the press carried frequent stories of farmers from the South and West urging the revival of the War Finance Corporation and a liberalization of its lending powers. Secretary of the Treasury Houston and Federal Reserve Governor W. P. G. Harding were frequently quoted as opposing any such move.<sup>31</sup> The pressure on Congress finally became so heavy that early in December the Senate Agriculture Committee drafted a resolution requesting the revival of the lending activities of the corporation. Senator Gronna introduced this resolution on December 7,

<sup>29</sup> Section 9 of H. R. 16136, An Act to Amend the Liberty Bond Acts and the War Finance Corporation Act.

<sup>29a</sup> Houston succeeded Glass as Secretary of the Treasury in February, 1920.

<sup>30</sup> Hearings before the Senate Committee on Banking and Currency on S. J. Resolution 212, 66th Cong., 3rd Sess., p. 65.

<sup>31</sup> *New York Times*, October, November, December, 1921.

1920.<sup>32</sup> Preceded by a rather wordy introduction the pertinent part provided:

That the Secretary of the Treasury and the members of the War Finance Corporation are hereby directed to revive the activities of the War Finance Corporation, and that said Corporation be at once rehabilitated with the view of assisting in the financing of the exportation of agricultural and other products to foreign countries.

After considering the matter briefly on three different days the Senate approved the resolution without a roll call, December 13, 1920. The resolution was referred to the Committee on Banking and Currency in the House. Notwithstanding the hearings that had already been held, the committee spent three days going over the same ground.<sup>33</sup> Again the two chief witnesses were Mr. Meyer and Secretary Houston. The latter vigorously defended his action of the summer before when he had brought about the suspension of the lending activities of the corporation. The Secretary of the Treasury showed great reluctance to discuss the possibility of reviving the corporation and left no doubt that any such action on the part of Congress was not favored by him.

On the other hand Mr. Meyer expressed his support of such a move in the strongest terms. It was clear from the questions asked and the opinions expressed that the committee was in close harmony with the Meyer point of view. It reported the resolution favorably after eliminating the preamble and an unimportant second section.<sup>34</sup> The House approved the resolution without change after a very brief discussion on December 18, the vote being 212 to 61. The Senate concurred in the House amendments two days later.

32 S. J. Resolution 212, 66th Cong., 3rd Sess.

33 Hearings before the House Banking and Currency Committee on S. J. Resolution 212, 66th Cong., 3rd Sess., December 14-16, 1920, 133 pages.

34 H. Report 1131, 66th Cong., 3rd Sess., December 17, 1920.

President Wilson had not expressed his stand on the revival controversy during its discussion in Congress; nor had the question of his stand ever been raised either during the hearings or the debates.<sup>35</sup> Upon the approval of the resolution by Congress he referred it to Secretary Houston who urged its rejection and prepared a long veto message for Mr. Wilson's signature. Immediately following the Christmas recess, Wilson returned the bill to Congress. The chief arguments advanced against the measure were (1) that resumption of governmental lending would raise false hopes that would not materialize; (2) that the War Finance Corporation was a war measure and should not be retained in peace time; and (3) that there should be less government in business. The Wilson magic had lost its spell; without pausing to give his arguments consideration the Senate voted to override the veto 53 to 5 on January 3, 1921. The following day the House, likewise without debate, repassed the resolution, 250 to 66.

The War Finance Corporation was the creation of the administration but its recreation came solely at the hands of Congress over the feeble protest of what had once been the most aggressive leadership in the history of the country.

#### THE AGRICULTURAL CREDITS ACT OF 1923

The Agricultural Credits Act of 1923 shows Congress at its best and at its worst. The act illustrates the faithful response of our national legislature to a national problem in the face of the negative attitude of an administration that refused to accept responsibility. On the debit side the act exemplifies the essentially disintegrated and disintegrating character of our legislative organization and procedure, resulting in the many inconsistencies, not to say contradictions, in the legislation which was finally achieved. Many minds working from different points

<sup>35</sup>Houston indicates that he had discussed the proposed revival of the War Finance Corporation in Cabinet meetings and the President had agreed with his views. David F. Houston, *Eight Years With Wilson's Cabinet* (Garden City, New York, Doubleday, Page and Company, 1926), vol. I, pp. 109-110.

of view and with different hypotheses as to how the problem should be solved resulted in an accumulation of widely divergent proposals. Chiefly because of limitations of time, but also because of the vagaries of politics the Agricultural Credits Act of 1923 was in reality not one act but two or even three separate acts, tied together with ambiguous language. The consequence was that much of what Congress sought to accomplish failed of realization by virtue of the clumsy way in which it sought to translate its good intentions into concrete legislation.

With the revival of the War Finance Corporation primarily for the benefit of the agricultural interests in early 1921 the deflationary trend was temporarily halted. Eugene Meyer was reappointed director of the War Finance Corporation on March 14, 1921. At Mr. Meyer's recommendation, Congress, on August 24, 1921, authorized the corporation to make loans, until June 1, 1923, to banks, trust companies, and cooperative associations of producers for agricultural purposes.<sup>36</sup> Loans were to be made for one year but were renewable up to three years. Shortly before, on June 7, 1921, Congress had provided for a Joint Commission of Agricultural Inquiry to hold extensive hearings and report its recommendations regarding the entire agricultural situation.<sup>37</sup> It was pending this report that the legislation of August 24 was intended to apply.

The Joint Commission of Agricultural Inquiry made its report on October 15, 1921.<sup>38</sup> Volume II of the four-volume report dealt with agricultural credit. It reported that the bank-credit facilities of the farmer were not adequate and recommended the establishment of a system of Intermediate Credit Banks as adjuncts to the Federal Land Banks. The report included a tentative bill incorporating its recommendations. This

36 S. 1915, 67th Cong., 1st Sess. For the background of the 1923 act see Frieda Baird and C. L. Benner, *Ten Years of Federal Intermediate Credits*, (Washington, D. C., The Brookings Institution, 1933).

37 S. Con. Res. 4, 67th Cong., 1st Sess. The original resolution directed the commission to report in ninety days. A second resolution (H. Con. Res. 26, 67th Cong., 1st Sess.) extended its life until January 1, 1922.

38 H. Report 408, 67th Cong., 1st Sess., October 15, 1921. In four parts.

bill was introduced in both houses and became known as the Lenroot-Anderson bill.<sup>39</sup> The Banking and Currency Committees of both houses held extensive hearings during the summer of 1922 for there was strong demand from the farm sections for relief. Matters moved slowly, however, because of the many conflicting ideas among those who wished to do something tangible for the farmer. The farm bloc found itself badly torn with internal disagreements. Existing credit agencies such as the Federal Reserve Board, Farm Loan Board, and War Finance Corporation were loath to assume the thankless task of sponsoring legislation or of administering it after its realization. More than a year wasted away with nothing materializing despite the many farm credit bills that were tossed into the hopper.

Senator Lenroot and his colleagues on the commission continued to work over the bill which he had introduced almost a year before. In conjunction with the Department of Agriculture, the bill was revised in some respects and reintroduced by Mr. Lenroot in December, 1922, as S. 4103. In the meantime another bill more restricted in scope had been drafted by Eugene Meyer and introduced by Senator Capper. This was not a general agricultural credit measure; it was intended to apply only to operators in the livestock industry, but it was frequently confused with the broader proposal and added materially to the state of uncertainty.

At the beginning of the fourth session of the Sixty-seventh Congress President Harding urged rural credits legislation in general terms but refrained from endorsing any specific plan. Both the Capper and Lenroot bills were introduced again, as S. 4280 and S. 4287, respectively. The Banking and Currency Committee reported the Capper measure first and the Senate began its consideration on January 15, 1923.<sup>40</sup> In his introductory remarks Senator Capper emphasized the limited scope of his measure. It involved the government in no expense, relying entirely upon private credits. The senator stated that

39 S. 3051 and H. R. 13033, 67th Cong., 3rd Sess.

40 S. Report 998, 67th Cong., 4th Sess., January 8, 1923.



the bill had no opposition although some thought that it did not go far enough. He insisted that there was no conflict between this and the Lenroot bill and argued that whatever happened to that bill this one should be passed. Little hostility was exhibited; nor was the enthusiasm marked. Senator Simmons seemed to epitomize the sentiment when he termed the bill harmless except that its enactment might be made the excuse for the postponement of "proper and adequate legislation." Numerous attempts to write in more vigorous provisions were beaten down; among these was an amendment by Senator Harrison giving the War Finance Corporation power to lend directly to individual farmers. Harrison admitted that Mr. Meyer, Director of the Corporation, would probably not approve his suggestion, whereupon the Senate rejected it 40 to 21. The Senate debated the measure rather carefully, consuming about a hundred pages of the *Record*, and passed it without roll call, January 19, 1923.

Meanwhile, the Banking and Currency Committee had also reported the Lenroot bill favorably.<sup>41</sup> It came before the Senate on January 25. Senator Lenroot began the debate. He recalled that the Capper bill just passed did not pretend to supply credit facilities to the general agricultural interests of the country, whereas that was the primary purpose of his proposal. He traced the history of the Joint Commission of Agricultural Inquiry down to and including the drafting of the measure then before the Senate and emphasized the days and weeks of work which had gone into it. The Department of Agriculture, he said, had been frequently consulted and approved the bill as it now stood. It also had the endorsement of the National Grange, the American Farm Bureau Federation (with some qualifications), the Secretary of Commerce, the Federal Reserve Board, and the Federal Farm Loan Board.<sup>42</sup> According to Senator Lenroot the only person in high position who opposed the bill was the Secretary of the Treasury, Andrew J. Mellon. The

41 S. Report 1003, 67th Cong., 1st Sess., January 11, 1923.

42 *Congressional Record*, 67th Cong., 1st Sess., p. 2368, January 25, 1923.

Lenroot proposal was rather carefully considered; no one was outspokenly hostile to it although several persons criticized it for not going far enough. Chief among this group was Senator Norbeck of South Dakota. After considering manifold amendments and defeating most of them, many by record votes, the Senate approved the Lenroot bill, 69 to 0, on February 2, 1923, and sent it to the House for consideration along with the Capper bill which had passed the week before.

Agricultural credit legislation had been before the House Banking and Currency Committee during the preceding year but little had been done. Senate action had been awaited by the House leaders in the hope that time and effort might be saved thereby. The lone legislative output of the House relating to agricultural credits had been the passage of the Strong amendments to the Federal Farm Loan Act for the purpose of liberalizing the credit provisions of that act.<sup>43</sup> When the two Senate bills were tossed in the lap of the House Committee on Banking and Currency scarcely a month before the short session was to end, the committee realized that enactment of any kind of a law would require expeditious action. Accordingly, instead of attempting to work out the best measure possible, the committee hitched in tandem not only the two bills from the Senate but also the main provisions of the Strong bill which the House had already approved. It reported this monstrosity to the House<sup>44</sup> under the number of the Capper bill (S. 4280); thus making it possible, should it pass the House, for the three bills to be considered by the conference committee.

The House took up the bill on February 28. In spite of half-hearted opposition from both sides it was passed with but little debate on March 1, 1923, by a vote of 306 to 36. The conference report was agreed to in the House on March 3, by a vote of 276 to 34, and in the Senate upon the same day.

The Agricultural Credits Act of 1923, whatever its merits or defects, was wholly legislative both in origin and enactment.

43 H. R. 14270, 67th Cong., 1st Sess.

44 H. Report 1712, 67th Cong., 1st Sess., February 24, 1923.

## THE RECONSTRUCTION FINANCE CORPORATION ACT 1932

The ancestry of the Reconstruction Finance Corporation stems from the success achieved by the War Finance Corporation, especially during its revival in 1921 and its continued operation throughout most of the decade 1920-1930. The success of the experiment is indicated in the fact that the loans were largely repaid and government losses were surprisingly low. The easy money conditions of the following years removed the necessity of further governmental aid; the War Finance Corporation was therefore dissolved and its uncollected loans transferred to the Treasury for final liquidation.

President Hoover's statement to the press on December 3, 1931,<sup>45</sup> that he intended to recommend to Congress the creation of a giant government corporation patterned somewhat along the lines of the War Finance Corporation did not come entirely as a surprise. The possibility of such a move had already been hinted. Early the preceding October, after secret conferences with some of the leading bankers in the country, Mr. Hoover had summoned to the White House forty congressional leaders of both parties, discussed his plan with them, and announced through the press his program for easing the pressure of the depression. The plan called for the banking industry throughout the country to set up a \$500,000,000 National Credit Corporation the capital of which was to be subscribed voluntarily by the banks themselves. This fund was to be used for making loans to hard-pressed but financially sound banks, thus reducing the number of forced closings resulting from temporary inability to liquidate. In explaining this new step the President stated that he might at some later date recommend the creation of a lending agency to be operated by the government itself, if in his opinion necessity seemed to require it. His statement of December 3 came by way of fulfilling this promise. The next step came five days later when the proposed Reconstruction Finance Corporation was given a prominent place in his third

<sup>45</sup> *New York Times*, December 4, 1931, p. 1.

annual message to Congress.<sup>46</sup> This was the first official move toward the creation of a super finance-reservoir for the aid of private business. Identical bills, drafted in the Federal Reserve Board under the personal supervision of Governor Eugene Meyer, were introduced the same day that the President's message was read. The bill (H. R. 5060, 72nd Congress, 1st Session) was sponsored in the House by Representative Strong of Kansas, a Republican member of the House Committee on Banking and Currency. In the Senate the bill (S. 1, 72nd Congress, 1st Session) was introduced by Senator Walcott, a ranking Republican member of the Banking Committee.

President Hoover's action in urging Congress to create the Reconstruction Finance Corporation coupled with his presentation of a draft bill prepared under the direction of one of his chief advisers stamps the Reconstruction Finance Corporation bill as an administration measure. The President did not disclose the source of his decision to advocate such an agency. Attention has already been directed to the successful career of the War Finance Corporation. This experience was well-known to Mr. Hoover. His intimate financial adviser, Eugene Meyer, Governor of the Federal Reserve Board, had been director of that agency both during its war existence and when it was revived in 1921. It can be assumed that Mr. Hoover had received the benefit of this experience in the conversations which must have taken place during the summer of 1931 when conditions were growing daily more desperate. But the use of government resources to shore up the sagging framework of the country's financial structure had not received much attention if one can judge from the public records of the time. Neither the daily press, the various publications dealing with trade or financial matters, nor the pages of the *Congressional Record*, usually a fairly accurate barometer of contemporary intellectual atmosphere, had revealed any sustained discussion of such a step<sup>47</sup>.

<sup>46</sup> *Ibid.*, December 9, 1931, p. 21.

<sup>47</sup> Representative Adolph J. Sabath of Illinois claimed credit for initiating the government credit agency proposal more than a year before Presi-

In presenting his recommendations, Mr. Hoover referred to his previous statement of October 6. He stressed the urgency of the situation, the prime importance of expeditious action by Congress in order that the new corporation could begin its resuscitative activity immediately. He urged his congressional leaders to give full clearance to the Reconstruction Finance Corporation bill, and to postpone all other matters until it should be passed. The banking committees in both houses were already engaged in hearings on banking reform but at his request they put this aside in favor of the finance corporation bill. In a conference on December 16 with Representatives Snell, Aldrich, Hoch, Tilson, Hadley, and Michener, all stalwart Republicans, Mr. Hoover reiterated the importance of speed. Minority Leader Snell told him he hoped for action before Christmas but was doubtful if it could be achieved.<sup>48</sup> Similar sentiments were exchanged by Senator Walcott and the Chief Executive on December 19. In order further to hasten final decision the President attempted to persuade the Congress to forego or at least to curtail its Christmas recess, but except for a few of the traditionally atypical figures such as Borah, who endorsed the idea, his entreaties fell upon deaf ears. Failing in this the President was forced to mark time over the Christmas holiday. On December 26 he let it be known that no matter how irresponsible Congress might be he could not afford to indulge in the luxury of idleness while the nation was in peril.<sup>49</sup> He announced tersely that he planned to spend the remainder of his holiday holding numerous individual conferences with congressmen, both Democrats and Republicans, in an effort to gain the speedy action which had suddenly become almost an obsession with him.

dent Hoover's announcement. Although Mr. Sabath did introduce a bill (H. R. 5116) to create a prosperity finance corporation on the first day of the session, there is no evidence that his action influenced Mr. Hoover.

<sup>48</sup> *New York Times*, December 17, 1931, p. 19.

<sup>49</sup> *Ibid.*, December 27, 1931, p. 1.

Fretting visibly under the delay, he greeted Congress upon its return on January 4 with a special message renewing his exhortation for speedy passage of an eight point program in which the Reconstruction Finance Corporation bill held a place of prominence.<sup>50</sup> Congress had not yet become conscious of the capacity for speed it was to exhibit scarcely more than a year later. Although it was actually moving with considerable dispatch, its deliberate manner was plainly irritating to the White House. Business opinion as reflected in the daily press was no less insistent upon speed and doubtless this did influence Congress to quicken its tempo. Anyone seeming to hold up proceedings was likely to become the object of editorial castigation. Senator Blaine of Wisconsin was harshly criticized by the *New York Times* for his refusal to permit Senate debate on the bill to begin a day earlier than it could under the regular rules. *Business Week* also commented with disapproval upon Mr. Blaine's lack of patriotism. Several others, including Representative LaGuardia of New York, were lectured for their unwillingness to give the bill *carte blanche* approval when it reached the floors of the Congress. Nevertheless six weeks were to slip by between the President's message and the final passage of the bill.

The Senate subcommittee on banking and currency held open hearings on four different days, December 18, 19, 21, 22, 1931.<sup>51</sup> The administration bill (S. 1), introduced by Senator Walcott, chairman of the subcommittee, served as the basis for the brief hearings. Silence settled upon the scene as the committee adjourned its hearings and retreated into executive session on December 22. Word emerged on January 5 that the bill had been completed and that some important changes had been made.<sup>52</sup> The most significant were: (1) The removal of the provision permitting Federal Reserve Banks to rediscount

<sup>50</sup> *Ibid.*, January 5, 1932, p. 1.

<sup>51</sup> Hearings before Senate Committee on Banking and Currency on S. 1, 72nd Cong., 1st Session, December 18-22, 1931. 229 pages.

<sup>52</sup> *New York Times*, January 4, 1932, p. 1.

Reconstruction Finance Corporation bonds, (this was a victory for Senators Glass and Bulkley because they had prevailed in their attempt to prevent any liberalization of existing Federal Reserve discount rules only after a stiff battle with administrative forces); (2) the addition of a provision requiring approval by the Interstate Commerce Commission of applications by railroads for loans before they could be considered by the Reconstruction Finance Corporation;<sup>53</sup> and (3) an increase in the size of the administering board from five to seven members by requiring four lay members instead of two, with the further proviso that not more than four members should belong to the same party. (This in effect required the President to appoint at least three Democrats since the three *ex officio* members presumably would be Republicans.)

General debate was listless; both the bill's critics and its defenders seemed rather bored. The single most spirited speech was an attack by Senator Blaine. He insisted that the pending bill was the product of and for the sole benefit of the large banking institutions and the railroads. He could see no help in it for the small banks or business men, the ones in his opinion whose circumstances were the most critical. Aside from Senator Blaine's opposition, the bill was not the object of any great attack in the Senate. Virtually no attention was devoted to the implications of the Reconstruction Finance Corporation—the projection of the Federal Government into the market as a supplier of capital for private enterprise.

S. 1, as amended, passed the Senate on January 11, by a vote of 63 to 8; party lines were obliterated in the voting.<sup>54</sup> Be-

<sup>53</sup> Secretary Mellon, in a letter to the committee on December 22, stated that this was Governor Meyer's suggestion.

<sup>54</sup> For: 34 Republicans, 29 Democrats; Against: 3 Republicans, 5 Democrats. Neither the vote nor the debate which preceded it seems to bear out the statement made by William Starr Myers and Walter H. Newton in their history of the Hoover Administration: "There was great opposition, especially in the Senate to his Reconstruction Finance Corporation Legislation." W. S. Myers and W. H. Newton, *The Hoover Administration: A Documented Narrative* (New York, Scribners, 1936), p. 158.

sides the committee amendments already referred to, numerous others were added. Among the more notable were: Senator Robinson's proposal to extend the lending powers of the Reconstruction Finance Corporation to agricultural credit and livestock corporations and to federal and joint stock land banks; Senator Reed's amendment removing the tax exemption for estate and inheritance tax purposes from Reconstruction Finance Corporation bonds; one by Senator Wheeler placing Canadian bonds on an equal basis with other foreign bonds in limiting the securities which the Reconstruction Finance Corporation might accept; Senator Smith's proposal making the sum of 95 million dollars available for small loans to farmers, under the jurisdiction of the Secretary of Agriculture; a provision by LaFollette requiring itemized quarterly reports; and an amendment reducing the pay of directors of the corporation from \$12,000 to \$10,000. The list is not complete but it is revealing in that it indicates the type of amendment that every bill encounters.

Outstanding among the amendments that failed of passage was the request of Senator Copeland, earnestly supported by Senators Wagner and Lewis, to expand the lending power of the Reconstruction Finance Corporation so as to include municipalities. Despite urgent pleas by these senators and considerable pressure from Mayor Walker of New York City and others, this concession failed to materialize.

The White House lost little time in letting it be known that the bill did not meet with its approval. Mr. Hoover immediately conferred with Senators Walcott and Glass, seeking to remove certain undesirable features. Meantime the House was beginning debate on its own reconstruction bill (H. R. 7360).

The House Committee on Banking and Currency, under the chairmanship of Representative Steagall, had begun hearings on its own bill December 18, 1931, and continued them on January 5, 6, and 7, 1932. The bill was reported to the House as H. R. 7360 and debate was begun on January 11, the day that the Senate passed its bill. Debate was carried on under a special



rule permitting eight (later extended to eleven) hours of general debate and amendment under the five-minute rule. House debate was decidedly one-sided. Friends of the bill had psychology on their side; everyone seemed to realize that arguments against it would not influence any votes. Representative LaGuardia was the most articulate representative of the opposition. In a characteristic speech he reviewed the sins of the bankers and Wall Street, charging that this was their bill written for purely selfish purposes. Its benefits, he insisted, would accrue to the big fellow only; therefore the duty of Congress was to enact legislation that would help those who really needed it—the little fellows. To this end he called upon the committee for legislation guaranteeing bank deposits, relieving unemployment, and other projects of similar character.

The House proceeded to consider amendments. As usual in the lower body, individual amendments enjoyed very limited success. Of thirty-four proposed changes only three were accepted: one by Mr. Rayburn, prohibiting the payment of commissions to intermediaries for obtaining Reconstruction Finance Corporation loans; one by Mr. Steagall, making Reconstruction Finance Corporation bonds legal investments for fiduciary, trust, and other public funds under the control of the United States; and one by Mr. LaGuardia, imposing a criminal penalty against any official or employee of the Reconstruction Finance Corporation for using information gained by them in their official capacity for speculating in the securities market. None of these amendments was of prime importance. A renewed effort was made in the House to extend the Reconstruction Finance Corporation's lending powers to include municipalities; Representative Sabath sought to put through such an amendment but to no avail. On January 15, 1932, the House passed the bill 335 to 55; the vote as in the case of the Senate ignored party lines, the party breakdown being as follows: For: 181 Republicans and 154 Democrats; Against: 12 Republicans and 43 Democrats.

On January 18, the Senate substituted its bill for the House bill, added two more amendments, and sent it off to conference. The two new amendments were typical of those offered previously. The first, sponsored by Senator Howell, limited Reconstruction Finance Corporation loans to any one corporation or its subsidiaries to 100 million dollars; the second, which was fathered by Senator Wheeler, required the Secretary of Agriculture to give preference in making loans to farmers to sections in which crop failures had occurred the year before.

The two bills differed in numerous minor provisions, but it was not anticipated that these would cause the conference committee any great difficulty. The one major difference lay in the directly opposing provisions governing the eligibility of Reconstruction Finance Corporation bonds to be rediscounted by the Federal Reserve Banks. The administration still favored the liberal position set forth in the House bill; Senator Glass let it be known that he would not support the bill unless this feature was removed. In view of the enormous majorities by which the bill passed both houses, it seems doubtful if Senator Glass' opposition would have been sufficient to prevent final passage, but it would have precipitated a long struggle. Anxious to prevent any further delay the administration finally gave in; word came from the White House on January 19 that the President now opposed making Reconstruction Finance Corporation bonds eligible for rediscount by Federal Reserve Banks but in the language of the existing Senate bill favored making them either purchasable or salable by the Treasury. Complete agreement was reached by the conference committee on January 19. Several changes were made, among them a new clause permitting the Reconstruction Finance Corporation to lend up to 200 million dollars to aid in rehabilitating closed banks, a concession to the progressives led by LaGuardia. Senator LaFollette's amendment requiring detailed quarterly reports was changed under administration influence so as to eliminate the "detailed" requirement.

After inconsequential debate in both houses, the conference report was adopted without record vote on January 22, 1932. The completed bill was immediately rushed to the President who stopped in the middle of an important conference to sign it without making any public statement.

Several points emerge in reviewing the history of the Reconstruction Finance Corporation bill. The first is the insistent although only partially successful pressure from the White House for its speedy passage. When considered against the background of the President's resolute refusal to call an extra session of Congress during the months immediately preceding its logic is not clear. A possible explanation is simply that of tardiness on the part of the President in making up his mind. Perhaps this is an example of what Walter Lippmann meant when he wrote in the *Herald Tribune* for October 1, 1931: "Mr. Hoover's deepest difficulty, it seems to me, is that he has no well-considered conception of his office and of his own purposes."

On the other hand the insistence upon speed may have been motivated by quite different considerations. It has been suggested that the concentration of attention upon the Reconstruction Finance Corporation bill to the exclusion of everything else was part of a strategic plan to prevent the passage of undesirable banking legislation. If this was the objective, it was successful; for Senator Glass had to wait more than a year before he was to see his bill become law. It hardly seems possible that this was the primary purpose behind Mr. Hoover's conduct; it may, however, well have been a consciously recognized and highly desirable by-product of a more statesmanlike aim.

In the second place, slow as the progress of the Reconstruction Finance Corporation bill through Congress may have seemed to the impatient President its speed far surpassed that of anything else in his program that was to be enacted during the following months. He was exceedingly fortunate that this proposal was considered during the early days of the session rather than later, for as the weeks went by the dissension fore-

cast at the beginning of the session materialized. Friction between the President and the Congress became acute; positive accomplishment was virtually impossible. The necessity of having to deal with a Democratic House and a Senate that was only slightly better from the standpoint of party complexion became more embarrassing as the fall elections drew nearer. The disregard of party lines in congressional voting that has been remarked upon in connection with the Reconstruction Finance Corporation bill gave way to rather well-defined partisan alignment as the session wore on. Had the Reconstruction Finance Corporation been recommended in March instead of the preceding December its chances of passing would have been less favorable. From this point of view the President's urge for speed may be interpreted as being motivated by a high degree of political foresight.

#### THE EMERGENCY FARM MORTGAGE ACT OF 1933

During its early stages the depression bore more heavily upon the farmer than upon any other group. The closing years of the great industrial boom of the twenties had found the farmer already hard pressed to meet the payments on the land that he had purchased at greatly swollen prices during the war years a decade earlier. The Agricultural Marketing Act of 1929 had been a recognition that all was not well with the farmer, but it had produced disappointing results and by 1930 the rising tide of foreclosures brought cries for relief from the agricultural areas all over the country. The first move to enlist the aid of the Federal Government came from Congress rather than from the President. On December 8, 1930, Senator Frazier of North Dakota introduced a bill which provided for the refinancing of farm mortgages.<sup>55</sup> This bill was the work of a group of men of whom the most active was William Lemke, former Attorney General of North Dakota and later to become a member of the House of Representatives from that state. It provided for the issuance of bonds by the Federal Farm Loan System,

<sup>55</sup> S. 1109, 71st Cong., 3rd Sess.

such bonds to bear an interest rate of  $1\frac{1}{2}$  per cent if secured by mortgages on farms and 3 per cent if secured by chattel mortgages on livestock. This bill was referred to the Senate Committee on Banking and Currency where it died.

Senator Frazier reintroduced his bill the following year and this time succeeded in getting it referred to the Committee on Agriculture and Forestry.<sup>56</sup> On December 16, 1931, Senator McNary, chairman of the committee, sent a copy of the bill to Secretary of Agriculture Arthur M. Hyde, asking his opinion of the proposal. No reply was received so on January 22, 1932, Senator Frazier sent a second copy to the Secretary repeating the request for an opinion. Mr. Hyde replied in a single sentence: "It is my judgment that the bill which you enclose is not conducive to the best interest of American farmers."<sup>57</sup>

Despite the rebuff from the Department of Agriculture, a subcommittee of the Senate Committee on Agriculture, under the leadership of Senator Frazier, held hearings on the bill for three days during February, 1932.<sup>58</sup> Representatives from numerous Farmers' Union groups appeared in its support as did Mr. Lemke. Representatives from the Farm Loan Bank Board opposed the bill; they were supported by a letter from Secretary of the Treasury Mellon expressing official disapproval.

The Frazier bill had made no progress by midsummer, 1932, so when the administration home loan bill was before the Senate, Senator Frazier offered his bill in the form of an amendment as a new title.<sup>59</sup> After much debate the Senate finally referred Frazier's amendment to the Committee on Banking and Currency.<sup>60</sup> Further hearings were held during De-

56 S. 1197, 72nd Cong., 1st Sess.

57 Hearings before a subcommittee of the Senate Committee on Agriculture and Forestry on S. 1197, 72nd Cong., 1st Sess., p. 4.

58 Hearings before a subcommittee of the Senate Committee on Agriculture and Forestry on S. 1197, 72nd Cong., 1st Sess., February 2, 3, 5, 1932. 128 pages.

59 S. 2959, 72nd Cong., 1st Sess.

60 *Congressional Record*, 72nd Cong., 1st Sess., p. 14569, July 5, 1932.

cember, 1932, and January, 1933, but again the proposal ran into a dead end.<sup>61</sup> By this time, however, the foreclosure problem had become so alarming that Congress was under extreme pressure. During the first two months of 1933 dozens of bills providing various forms of debtor relief were introduced. The Senate Committee on Banking and Currency as well as a subcommittee of that body held hearings on some of these bills.<sup>62</sup> The most common proposal was for the Federal Government to make loans for the refinancing of farm mortgages. Perhaps the one introduced by Senator George of Georgia is typical; it authorized the Reconstruction Finance Corporation to make loans of three billion dollars to help farmers refinance their mortgages.<sup>63</sup> Many of these bills were the work of various organizations, farm and otherwise; none of them came from or received the approval of the administration.

This was the state of affairs when the Roosevelt administration came into office. Farm mortgage relief became one of the first concerns of the new administration. A bill drafted by Dr. W. I. Meyers, assistant to the chairman of the Federal Farm Board, was introduced in both houses by Senator Robinson and Representative Jones.<sup>64</sup> The Senate Committee on Banking and Currency reported the bill favorably within two days after making only minor changes.<sup>65</sup> The House Committee on Agriculture, to which the bill had been referred in that body, held brief hearings on April 5 and 6 and reported a new and considerably modified bill on April 10.<sup>66</sup> The bill was called up under a special order setting eight hours of general debate but shutting

61 Hearings before the Senate Committee on Banking and Currency on S. 1197, 72nd Cong., 1st Sess., December 22, 1932, and January 7, 9, and 30, 1933. 90 pages.

62 Hearings before the Senate Committee on Banking and Currency, 72nd Cong., 2nd Sess., January 14-February 6, 1933. 264 pages.

63 S. 5329, 72nd Cong., 2nd Sess.

64 S. 1110 and H. R. 4590, 73rd Cong., 1st Sess.

65 H. Report 35, 73rd Cong., 1st Sess., April 10, 1933.

66 S. Report 17, 73rd Cong., 1st Sess., April 5, 1933.

out all amendments except those offered by the committee. This rule excited considerable criticism and elicited the charge of "rubber stampism" from the Republican side even at this early date. Representative Woodrum, later to exhibit less enthusiasm for administration leadership, stated the situation without simulation or embarrassment:

This is Franklin D. Roosevelt's bill; it is a part of his plan to help the farmer; and the Democrats of the House, if I interpret their attitude aright, are perfectly willing and satisfied to trust the leadership of the President and the leadership of the distinguished Chairman of the Committee on Agriculture, Mr. Marvin Jones, and his colleagues on that committee who have approved the bill.<sup>67</sup>

The administration bill, even after being amended by the House Committee on Agriculture, was something quite different from the Frazier bill. While it sought to give the farmer genuine relief by permitting him to borrow directly from the Federal Farm Loan Board, the rate of interest was 5 per cent rather than the much lower rates which the other bill had suggested. No little disappointment was expressed over this retreat. Even the chairman of the committee reporting the bill indicated disappointment that it did not do more. Other ranking members of the committee expressed similar opinions. Representative Boileau, who had submitted a minority report on the bill, urged its recommittal with directions to the committee to report the Frazier bill which, he said, had the general approval of the country.<sup>68</sup> In support of his argument he revealed that Congress had been memorialized by the legislatures of twenty-one states to pass the Frazier bill. It was pointed out by Mr. Boileau and others that, in the hope of getting a more liberal bill, the House had, by its own action, referred the Jones bill to the Committee on Agriculture instead of to the Committee on Banking and Currency. After a long debate a motion

<sup>67</sup> *Congressional Record*, 73rd Cong., 1st Sess., p. 1498, April 11, 1933.

<sup>68</sup> *Ibid.*, pp. 1511-1514.

to recommit was defeated 43 to 196 on a division vote, whereupon the bill was passed, 387 to 12, on April 13.

On April 22, the Senate version of the farm mortgage bill was disposed of favorably when it was offered by Senator Wagner as an amendment in the form of a substitute for Title II of the agricultural relief bill then under consideration. This title, cited as the Emergency Farm Mortgage Act of 1933, was agreed to without a record vote.<sup>69</sup> In slightly changed form necessitated by adjustments worked out in conference committee the farm mortgage bill was passed as part of the Agricultural Relief Act of 1933. Its final form was not greatly different from the original draft that had been handed the committee on April 3. This was a victory for the administration for its expeditious action had forestalled congressional action of a much more radical character. The overriding of a presidential veto on this some issue in 1938 may well be recalled in this connection.

### THE FEDERAL HOME LOAN BANK ACT OF 1932

We have already reviewed some of the more notable instances where the credit resources of the Federal Government have been extended to agricultural, business, and financial institutions. The expansion of this type of aid to home owners, which was to reach gigantic proportions during the New Deal administration, had its official beginnings under the Hoover administration, although, as will be seen, the genesis of the idea goes back much earlier. In 1916, Secretary of Labor William Wilson sponsored a bill to aid home owners by establishing a system of home loan banks through which mortgages could be refinanced. Bills providing such institutions were introduced by Senator Calder of New York and Representative Nolan of California.<sup>70</sup> Although hearings were held by the banking committees of both houses, nothing came of the matter because the country became preoccupied with the war. Leg-

<sup>69</sup> *Ibid.*, p. 2170, April 22, 1933.

<sup>70</sup> S. 1469, H. R. 6371 and H. R. 7597, 66th Cong., 1st Sess.



islation of similar import was suggested by Senator Copeland of New York in bills introduced by him in 1924 and 1927.<sup>71</sup> Economic conditions were not such, however, that these proposals excited attention; there was no sustained demand from economic groups and Congress had other more pressing matters demanding its attention. Herbert Hoover, while Secretary of Commerce, had been interested in the problem of home ownership. Under his direction several studies had been made and much valuable information assembled, but he had not carried his activities beyond the developmental stage at the time he became President.

During the summer of 1931, as a part of his program to restore prosperity, the President called a national conference on housing and home ownership to stimulate the construction of new homes on a nation-wide scale. This conference produced a comprehensive collection of materials on the various aspects of housing but it had little effect economically. On November 13, 1931, Mr. Hoover announced that he would shortly recommend legislation creating a system of home loan discount banks to provide relief for the home owner who found it impossible to keep up the payments on his mortgage.<sup>72</sup> A bill was drafted in the Department of Commerce and introduced early in the first session of the Seventy-second Congress by Senator Watson and Representative Luce.<sup>73</sup> This plan was endorsed by the President's Conference on Home Building and Home Ownership on December 4, 1931. It called for the creation of a system of home loan banks from which building and loan associations could obtain financial aid but it did not provide for direct loans to individual home owners. Furthermore, government participation was limited to a subscription of 125 million dollars to the capital stock of the home loan banks. The extremely conservative character of the proposal hardly warranted the

<sup>71</sup> S. 3228, 68th Cong., 1st Sess., and S. 2261, 69th Cong., 1st Sess.

<sup>72</sup> *New York Times*, November 14, 1931, p. 1.

<sup>73</sup> S. 35 and H. R. 5090, 72nd Cong., 1st Sess.

rather extravagant predictions with which it was unveiled for public scrutiny.

The Banking and Currency Committees of both houses held hearings<sup>74</sup> and the bill went through several revisions but did not lose its original character.<sup>75</sup> Although the House was Democratic at this time its Banking Committee seemed to take a greater interest in the home-loan bank bill than was the case in the Republican Senate. After a great deal of rewriting in committee under the direction of Representative Michael K. Reilly of Wisconsin, the final bill was introduced on May 24, 1932, and reported favorably the following day.<sup>76</sup> Debate began on June 10, 1932, under a special rule permitting two hours of general debate and amendment under the five-minute rule. In his introductory remarks Chairman Steagall pointed out that the Banking and Currency Committee during the present session had considered the federal farm bill, the Reconstruction Finance Corporation bill, the Glass-Steagall banking bill, and the home loan bank bill. His purpose was merely to call attention to the magnitude of the committee's burden and explain why the present bill had not been reported to the House earlier in the session.<sup>77</sup>

House debate did not amount to much. Hordes of amendments were offered but except for a few of a distinctly picayune

<sup>74</sup> Hearings before a subcommittee of the Senate Committee on Banking and Currency, on S. 2959, 72nd Cong., 1st Sess., January 14-February 23, 1932. 668 pages. The entire committee also held hearings on June 11 and 14, 1932. Hearings before a subcommittee of the House Committee on Banking and Currency on H. R. 7632, 72nd Cong., 1st Sess., March 16-30, 1932. 427 pages.

<sup>75</sup> S. 35 was succeeded by S. 2959; H. R. 5090 gave way to H. R. 7620 which in turn was superceded by H. R. 12280, the bill finally passed.

<sup>76</sup> H. Report 1418, 72nd Cong., 1st Sess., May 25, 1932.

<sup>77</sup> One may well question a system of organization which results in such a faulty division of labor. The concentration in a single committee of such broad jurisdiction that it had to function through four subcommittees as it did during this session does not take full advantage of the human resources available nor does it guarantee the breadth of base necessary in the attainment of truly representative legislation.

character they were uniformly rejected. The bill was approved without a roll call on June 15, 1932. Senator Watson reported H. R. 12280 to the Senate on June 20; he had already reported S. 2959 four days earlier.<sup>78</sup> When the Senate turned to the home loan bank bill on July 1, Senator Couzens requested Senator Watson to clarify the situation and explain why no committee report accompanied the House bill. Senator Watson replied that he had found the report of the House Banking Committee so good that he had decided to use it in place of a report from the Senate committee.

Senate debate seemed more penetrating than had the House deliberations. Many carefully prepared speeches dealt with the fundamental aspects of the home mortgage situation. Less attention was devoted to inconsequential amendments, more to the substance of the new proposal. The indirect character of the relief afforded to the individual home owner did not escape criticism. Senator Couzens sought to remedy this shortcoming. On July 5, he offered an amendment in the form of a substitute for the first twenty-seven sections of the present bill providing that the Reconstruction Finance Corporation could lend 400 million dollars to building and loan associations, banks, etc., on first mortgages on real estate. In spite of administration opposition the Senate approved this amendment by the narrow margin of 34 to 32. On July 12, the Senate reversed its action of the previous week by reconsidering and rejecting the Couzens amendment. It then passed the bill without a record vote but not until it had approved, again over administration opposition, the so-called Borah-Glass inflation rider. This amendment gave the circulating privilege for three years to all United States Government bonds bearing up to 3 and  $\frac{3}{8}$  per cent interest, thus permitting national banks to use these bonds as a basis for currency issues totaling \$995,000,000. This merely permitted a temporary return to the old national bank currency of pre-Federal Reserve days in order to increase the total amount of currency which might be placed in circulation. The Senate

<sup>78</sup> S. Report 837, 72nd Cong., 1st Sess., June 16, 1932.

made other changes in the bill. The total number of possible banks was reduced to four whereas the House bill had placed the number at from eight to twelve. A clause was written in providing for direct loans to individuals.

The conference committee had no difficulty in settling the differences between the houses except for the Borah-Glass amendment. Three times the Senate voted to insist upon its amendment; twice the House rejected it, but on the third vote in the House the minority leader, Bertram Snell, apparently under directions from the White House, announced his capitulation and the House concurred on July 16, 1932.

### THE HOME OWNERS LOAN CORPORATION ACT 1933

The Home Owners Loan Corporation Act, the first and largest of the New Deal measures for the relief of the home owner, was strictly administration in origin and was routed through both houses with very little modification. Early in April, 1933, the President announced through Senator Wagner that he contemplated a home owners mortgage bill.<sup>79</sup> On April 13, 1933, he sent a message to Congress on the subject, accompanied by a bill which had been drawn up by the Home Loan Bank Board. The bill provided for a corporation with a capital stock of 200 million dollars to be supplied by the Reconstruction Finance Corporation. The corporation could issue up to two billion dollars of its own bonds, the interest on which was to be fully and unconditionally guaranteed by the Federal Government. Loans were to be made directly to home owners at 5 per cent interest with the limitation that only homes worth \$10,000 or less were eligible for such loans.

Identical bills were introduced by Senator Robinson and Representative Steagall.<sup>80</sup> The Senate Committee on Banking and Currency held brief hearings,<sup>81</sup> the House committee held no

<sup>79</sup> *New York Times*, April 9, 1933, p. 1.

<sup>80</sup> S. 1317 and H. R. 4980, 73rd Cong., 1st Sess.

<sup>81</sup> Hearings before a subcommittee of the Senate Committee on Banking and Currency on S. 1317, 73rd Cong., 1st Sess., April 20, 22, 1933. 135 pages.

hearings had reworked the bill in committee and introduced a new bill (H. R. 5240) which it reported at the same time.<sup>82</sup> The bill was called up in the House under a unanimous consent agreement setting one and a half hours of general debate with full opportunity to offer amendments. This meant very little, for of the many amendments offered almost none prevailed. In spite of some complaint that the interest rate was too high to be of real relief to the home owner the bill received the support of the overwhelming majority as attested in the final vote of 383 to 4, on April 28.

The Senate did not get to the bill until June 5 but when it did it wasted little time in approving it without substantial amendment after less than one day of debate. There was no roll call. The conference report was approved by both houses on June 9, 1933, without debate or roll call.<sup>83</sup>

#### FEDERAL PUBLIC CREDIT LEGISLATION AFTER 1933

Extension of the credit resources of the Federal Government to various private fields of activity soon became one of the basic plans of the New Deal program for recovery. Within the next four or five years a whole series of important acts created billions of dollars of available credit upon which many different groups might draw for a wide variety of purposes. Among the most important of these new credit expansion measures were: the Federal Farm Mortgage Corporation Act of 1934, the Loans to Industry Act of 1934, the National Housing Act of 1934, the Farm Credit Act of 1935, the Rural Electrification Act of 1936, the United States Housing Act of 1937, the Farm Tenant Act of 1937, the Recovery Loan Act of 1938, the Commodity Credit Act of 1938, and the Farm Loan Act of 1938, the latter over the President's veto. Many other acts also carried sections providing various forms of federal credit as collateral or supplementary features of their specific objectives.

It is impossible to trace even briefly the legislative history of

<sup>82</sup> H. Report 55, 77th Cong., 1st Sess., April 25, 1933.

<sup>83</sup> H. Report 210, 77th Cong., 1st Sess., June 8, 1933.

all these acts; to do so would serve no useful purpose. Once the outlines of this new and important extension of federal activity were established, its application to each new segment of the population adhered pretty closely to pattern. In the initiation and formulation of these new proposals a share belongs to both the President and the Congress. Much of the initial bill drafting came from the administration, particularly in the first years. But Congress, always sensitive to the potential possibilities of this line of public policy, caught the spirit quickly and took an increasingly active part in working out the details of each new proposal. This trend was well illustrated in 1938 when Congress stole the ball from the administration and sharply reduced the rate of interest in the administration's own Farm Loan Act in defiance of Mr. Roosevelt's earnest pleas and then repassed the bill over his veto. .

## CHAPTER VIII

### BANKING AND CURRENCY LEGISLATION 1900-1940

Writing in 1934, H. Parker Willis and J. M. Chapman, two careful students of American banking<sup>\*</sup> development, state:

A review of American financial legislation from the Civil War down to 1933 reveals not a single occasion upon which the Federal administration has projected and brought before the legislative body any major change in the fundamentals of currency or banking or both, or has secured the adoption of such legislation.<sup>1</sup>

Events in the realm of banking and currency legislation during the New Deal years of 1933-1940 indicate that the pattern has not been modified notwithstanding the vigorous legislative leadership exercised by President Roosevelt in other fields. It is the existence of such conspicuous gaps in the breastworks of the executive leadership theory of legislation that counsels caution in accepting the theory. The careful observer will not be taken in by the thesis that Congress has ceased to be an important factor in the process of law-making. As the survey of American banking and currency legislation which follows indicates, governmental policy in this field has largely been left to the give and take of legislative bargaining; the Executive has played only a minor part in it.

#### CURRENCY ACT OF 1900

Though one of the most thorny issues of the post Civil War period, monetary legislation did not become a party issue until 1896. During the span of Republican ascendancy from 1860 until 1885 there was strife among the advocates of better silver prices, easier money, and higher commodity prices on the

<sup>1</sup> H. P. Willis and J. M. Chapman, *The Banking Situation* (New York, Columbia University Press, 1934), p. 43.

one hand and those who supported gold, sound money, and conservative business principles on the other. As this struggle was taking place within the Republican party, the national government was compelled to do what it could to please both camps or at least give the impression of doing so. Accordingly, the currency legislation of the period was contradictory; it reflected the shifting currents of sentiment and influence that were competing for control. The act of February 12, 1873, made gold the legal monetary standard. The Bland-Allison Act of February 28, 1878, passed over President Hayes' veto, provided for limited coinage of silver. The act of July 14, 1890, authorized the purchase of silver bullion and the issuance of silver certificates to be later redeemed by silver dollars. The act of November 1, 1893, repealed the silver purchase clause of the 1890 act but maintained the parity of gold and silver. The 1893 act was driven through Congress by President Cleveland at the cost of much patronage despite bitter complaint from powerful silver congressmen, but with this exception the currency legislation of this period was exclusively congressional in origin and determination. Party politics was of little importance; the issue frequently cut sharply across the two major parties and threatened in numerous instances to split them.

When the Democrats reached out and absorbed the silver advocates in 1896, however, the issue became more clearly drawn and the Republican party, somewhat against its will, was forced over into the position of a sound money party. Its sweeping victory in 1896 left it little choice but to provide new monetary legislation. The Indianapolis Monetary Conference of 1897-1898 appointed a commission to study currency reform.<sup>2</sup> Its recommendations were endorsed by President McKinley in a

<sup>2</sup> This conference was called by business leaders for the purpose of working out an agreement concerning a desirable national monetary policy. The conference—or convention, for that is what it really was—appointed a commission to make a technical study of feasible monetary plans and report back to the parent body the following year. Professor J. L. Laughlin of the University of Chicago directed the investigation and wrote the report.



special message on currency which he sent to Congress on July 24, 1897. His message, in effect, urged Congress to establish the gold standard. The Spanish-American war intervened and money legislation was momentarily relegated to the background but by 1900 there was once more a steadily increasing clamor for action. In his annual message on December 5, 1899, President McKinley again urged legislation to place the country on the gold standard.

On December 4, 1899, Representative Overstreet of Indiana introduced H. R. 1.<sup>3</sup> This bill provided for the payment of all interest-bearing obligations in gold coin; its passage would all but put the country on a gold standard basis. The bill was approved in the House on December 18, 1899, 179 Republicans and 11 Democrats voting "yea" and 142 Democrats, 5 Populists, and 3 Silverites voting "nay."

Senator Aldrich of Rhode Island had already introduced as S. 1 a bill identical to that introduced in the House by Overstreet. The Senate Finance Committee made some changes in this bill and reported it out immediately as an amendment in the form of a substitute to H. R. 1. The Senate bill was also a gold standard bill but it was in reality a straddle for while apparently guaranteeing a gold standard it sought to mollify the West by still permitting the use of silver to retire debts. Its political character was striking. The vote was a strictly party affair, 44 Republicans and 2 Democrats voting "yea," and 23 Democrats, 1 Republican, 3 Silverites, and 2 Populists voting "nay."

The conference report which followed the Senate bill rather closely was approved in the Senate 44 to 26 on March 6, 1900, and by the House, 166 to 120, on March 13. The most striking thing about the Currency Act of 1900 was its strictly partisan character. Though recommended by the President it was the work of a small number of congressmen dominated by a still smaller number of Republican senators.

## CURRENCY ACT OF 1908

The Act of 1900 had failed to meet the increasing demand for a more elastic currency. It was supposed to provide some flexibility by increasing the amount of notes issuable by banks to 100 per cent of the bonds held by them, but this had little effect. Students of banking had been insisting for some time that America should take a leaf from European banking experience and establish a system whereby commercial paper could be used as a basis for expanding the currency in times of increasing business activity. This had actually been suggested by the Indianapolis Monetary Commission of 1898 but chiefly because of the hostility of Senator Aldrich to anything except a bond-secured currency it had been omitted from the 1900 statute.

In his annual message of December, 1906, President Roosevelt mentioned revision of the currency laws as one of the urgent duties before Congress but he confined himself to the observation that a more elastic currency should be provided. On December 20, 1906, Representative Fowler, then chairman of the House Committee on Banking and Currency, introduced H. R. 23017. This bill, a very moderate measure, followed the general outlines of the Monetary Commission of 1898 and enjoyed the support of the banking leaders. It proposed a gradual change from notes secured entirely by United States bonds to notes secured by commercial assets. The measure did not receive the support of the Republican leadership in the House and the session ended without any action being taken.

The financial crisis of 1907 made it clear that the banking system was badly in need of modification. Moreover, the severe epidemic of bank failures through which the country had just gone gave rise to a nation-wide demand for some form of deposit guaranty to safeguard the small depositor who had been wiped out during the panic. At this time there began to appear a growing literature on the subject of bank deposit insurance; from 1908 until the World War it became one of the common

topics of discussion in banking and finance journals. President Roosevelt again urged Congress to do something about the currency situation in his annual message of December, 1907. He referred to his message of the previous year, reiterating the need for a more elastic currency but did not enlarge upon what he meant by this. He did not mention the matter of deposit guaranty but did urge establishment of a postal savings system as a means of safeguarding the savings of small depositors.<sup>5</sup>

Currency bills were introduced in both houses. On January 7, 1908, Senator Aldrich introduced a bill permitting currency to be issued on the basis of United States bonds and also on the bonds of state and local governments.<sup>6</sup> The bill provided also for the issuance of currency against bonds of railroads under supervision of the Interstate Commerce Commission. On January 8, 1908, Representative Fowler introduced a much more radical bill providing for a commercial paper secured currency and containing a bank deposit guaranty feature.<sup>7</sup> Under domination of Aldrich the Senate Finance Committee reported his own bill favorably on January 30, 1908, but in order to appease certain radicals led by Senator LaFollette, Senator Aldrich had to accept several amendments offered from the floor. The railroad bond feature was eliminated; banks were required to keep 80 per cent of their reserves in their vaults; banks were prohibited from investing any funds in the securities of any corporations whose officers or directors were at the same time officers of the bank. With these amendments the Senate passed the Aldrich bill on March 27, 1908, 42 to 16.

<sup>5</sup> President Roosevelt sent special messages to Congress on March 25 and April 28, 1908. Each message mentioned several subjects; the single paragraph in each dealing with finance merely urged action and specifically mentioned only postal savings banks. It does not appear that he took an active part in the currency legislation of his administration. Professor Laughlin states that Mr. Roosevelt exhibited great ignorance and lack of understanding on banking and currency matters. J. L. Laughlin, *The Federal Reserve Act, Its Origin and Problems* (New York, The Macmillan Company, 1933), p. 4.

<sup>6</sup> S. 3023, 60th Cong., 1st Sess.

<sup>7</sup> H. R. 12677, 60th Cong., 1st Sess.

Bitter hostility from the American Bankers Association, coupled with administration opposition and an unfriendly House leadership were obstacles too great for the Fowler bill to overcome. Although the House Committee on Banking and Currency tabled the Aldrich bill and reported the Fowler bill favorably, its fate was sealed. A conference of House Republicans was called on May 6, 1908, and a special committee headed by Representative Vreeland of New York was appointed to draw up a new measure. Fowler was left off the committee because he had incurred the hostility of the party leaders in both houses by his so-called radicalism. The new House bill, known henceforth as the Vreeland bill, was introduced on May 12, 1908.<sup>8</sup> It provided for a currency secured by commercial paper and created a National Currency Commission to study and report on a permanent measure. After some parliamentary maneuvering, the House passed the Vreeland bill, 185 to 145.

The Senate repassed its own measure in the form of an amendment to the Vreeland bill on May 15, 47 to 20, and both bills went to the conference. The resulting bill, now known as the Aldrich-Vreeland bill, was a compromise. It permitted some issuance of currency based on commercial paper; Aldrich yielded on this point only when he saw that it was the price of House concurrence on any measure at that session.

The House approved the conference report, 166 to 140, on May 27, 1908. The Senate took up the conference report on May 28. Senators LaFollette, Stone, and Gore sought to call attention to its unsatisfactory character by a filibuster. LaFollette held the floor for eighteen and one-half hours, and Stone and Gore consumed nine hours between them but Senator Aldrich took advantage of the momentary pause on the part of Senator Gore and moved for a vote. The Senate approved a conference report by a 43 to 22 vote, 5 Republicans joining the solid Democratic minority. President Roosevelt signed the bill although he had previously announced that he would veto it. His influence was negative at best.

## THE FEDERAL RESERVE ACT OF 1913

Perhaps the single sharpest indictment against the Democratic party in the eyes of the business and financial world during the quarter century 1885-1910 was its radical views on the money question.<sup>9</sup> It is extremely ironical, therefore, that the single most comprehensive and on the whole, most beneficial banking measure in the history of the country should have been the product of a Democratic administration and a Democratic Congress. The history of the genesis and evolution of this law is exceedingly complex with many persons having had a part and even more, perhaps, making subsequent claims to a share in the proceedings. No less than five large volumes have dwelt upon it as their central theme; numerous others have devoted large sections to it.<sup>10</sup> Most of these books have been chiefly concerned with the question of authorship of the Federal Reserve Act; all of them are in more or less disagreement.

From the welter of confusing and contradictory claims presented by House, Glass, Owen, Willis, Warburg, and Laughlin, to mention only the chief figures in the controversy, two generalizations only can be made: (1) Banking reform in general and several of the specific features of the Federal Reserve Act had been the subject of investigation for at least five years be-

9 Not all Democrats favored easy money; Cleveland had fought courageously and successfully for sound monetary principles and Parker's views were anathema to the currency expansionists in the Democratic party. It is also true that a large number of Republicans had supported free silver and other inflationary schemes. Nevertheless, during this period the Democratic party became stamped with the mark of unorthodoxy in monetary matters.

10 R. L. Owen, *The Federal Reserve Act* (Washington, D. C., the author, 1919); H. P. Willis, *The Federal Reserve System* (New York, The Ronald Press, 1923); Carter Glass, *An Adventure in Constructive Finance* (Garden City, Doubleday, Page and Company, 1927); Paul M. Warburg, *The Federal Reserve System* (New York, The Macmillan Company, 1930); J. Laurence Laughlin, *The Federal Reserve Act Its Origin and Problems* (New York, The Macmillan Company, 1933). To these should be added the numerous biographical works on Wilson, House, Glass, McAdoo, and Owen. All of these deal with the history of the Federal Reserve Act from various points of vantage and in varying degrees of detachment.

fore 1913; (2) A great many people had a hand in the formulation of the Federal Reserve Act.

It is important to note that during the numerous public discussions of banking which took place between 1908 and 1912 many of the ideas that were later to be incorporated into the Federal Reserve Act made their appearance and came in for considerable attention. In 1910, Paul M. Warburg, an important figure in American banking and a man who had had wide banking experience in Europe prior to his coming to America, offered a fairly well developed plan calling for a "United Reserve Bank of the United States."<sup>11</sup> He proposed a bank in Washington, D. C., with a capital of \$100,000,000 whose function would be that of rediscounting commercial paper, etc., so as to provide a more flexible currency system for the expanding commercial needs of the country. In November of the same year, the Academy of Political Science at Columbia University held a conference on currency problems at which Professor J. Laurence Laughlin delivered an address entitled "Bank Notes and Lending Power" in which he advocated an elastic credit but preferred some kind of district organization rather than the central bank visualized by Mr. Warburg.<sup>12</sup> This idea of regional banks was not new with Professor Laughlin, however. Mr. Victor Morawetz of New York had suggested such a plan as early as 1909, in a small book entitled *The Banking Problem*.<sup>13</sup> It came to be discussed quite generally throughout the country during succeeding months due chiefly to the efforts of the National Citizens' League for a Sound Banking System. This association, composed chiefly of business men rather than bankers, had organizations in forty-five states. During an eighteen month period spanning 1911 and 1912 it carried on a program of education in "sound banking principles," emphasizing the strictly banking aspects rather than taking sides on such

<sup>11</sup> Laughlin, *op. cit.*, p. 9.

<sup>12</sup> *Ibid.*, p. 13.

<sup>13</sup> Warburg, *op. cit.*, I, 84.

controversial problems as that of a central bank versus regional banks, etc.<sup>14</sup> In the course of its campaign the Citizens' League sponsored an extensive program of speaking and writing with many persons throughout the country taking part. The 428-page book, *Banking Reform*, edited by Professor Laughlin, was published in April, 1912. More than half of the chapters of this important book, of which some 15,000 copies were distributed, were written by H. Parker Willis, who was later to be the draftsman of the Federal Reserve Act. A semimonthly magazine called *Banking Reform*, was published throughout this same period, and by virtue of a circulation that reached 25,000 it played an important part in the League's program.

Late in 1910 and early in 1911 Senator Aldrich with the help of several New York bankers worked out the first draft of a banking bill, which served an exceedingly useful purpose as a basis for discussion and criticism. Aldrich proposed a central banking system controlled by the banks rather than by the government. The aforementioned Citizens' League did not take a definite position on the Aldrich bill because of an internal schism whereby the New York branch urged its support and the western branch, dominated by Chicago, refused to endorse it.<sup>15</sup>

In January, 1912, the report of the Monetary Commission together with the Aldrich bill was referred to the House Committee on Banking and Currency. At that time the committee was divided into two parts. One part with Representative Arsene Pujo of Louisiana, chairman of the entire committee, at its head was to devote its attention to an investigation of the so-called Money Trust.<sup>16</sup> The other part was to function as a sub-

<sup>14</sup> Laughlin, *op. cit.*, p. 89.

<sup>15</sup> Senator Glass had charged in his *New York Post* articles (later published as *An Adventure in Constructive Finance*) that the Citizen's League during June and July of 1912 was attempting to educate the country into accepting a central bank plan. Professor Laughlin insists that Mr. Glass was in error on this score. From the texts of the material being disseminated by the League at this time it would appear that Professor Laughlin was correct.

<sup>16</sup> Willis, *op. cit.*, p. 109.

committee to study the specific problem of banking reform. Carter Glass of Virginia, the second ranking Democrat on the Banking Committee, became the chairman of this subcommittee.

In spite of the increasing interest in banking reform it did not become an issue in the presidential campaign of 1912. Both parties took refuge in banking planks that were vague and non-committal. The Democratic plank, strongly influenced by Bryan and his followers, merely announced, "We oppose the so-called Aldrich bill or the establishment of a central bank," without taking the trouble to indicate what it favored, except a revision of the banking laws to prevent the recurrence of panic. The Republican platform was equally uncommunicative, "The Republican party has always stood for a sound currency and safe banking methods." It added that it favored banking law revision to the end that panics should be avoided. None of the candidates chose to discuss banking and currency during their campaign speechmaking.

Both Willis and Laughlin agree that throughout the campaign Governor Wilson was apparently unwilling to commit himself on anything relative to banking. Nor would he allow himself to be pushed into a corner. His political astuteness in avoiding the issue was well illustrated when during the campaign certain influential New York financial interests attempted to ascertain his attitude on the Aldrich bill. Mr. Wilson replied that he thought "the Aldrich plan was probably about 60 or 70 per cent correct but that the remainder of it would need to be altered" without specifying which parts fell into each category.<sup>17</sup> Such verbal fencing may not have satisfied the bankers but it had the advantage of permitting Mr. Wilson to become President-elect of the United States without having had to take a position on a complex problem about which he had not had sufficient time to make up his own mind. For this seems to have been the true cause of his silence. He was sufficiently realistic to know that the banking problem was a potential mine upon which the entire future of his administration might easily

<sup>17</sup> *Ibid.*, p. 140.



be damaged if it were not handled carefully. That he did not allow himself to be forced to take a definite stand until he had a better grasp of the facts is a tribute to his political insight and statesmanship.

Nevertheless, this meant that the task of proceeding with the groundwork of a future banking bill fell to someone else and Mr. Glass shouldered the burden. After his nomination in early August had reassured his return to Congress, Mr. Glass with the aid of Mr. Willis worked out the first draft of a banking bill, a task which was completed in early October.<sup>18</sup> Shortly after the election of Mr. Wilson, Mr. Glass wrote him requesting a conference on the banking bill. Mr. Wilson replied that he was leaving for Bermuda but would get in touch with Mr. Glass upon his return. It was not until December 26, 1912, that their first meeting took place, but at that time the President-elect expressed approval in principle of the outlines of the bill.<sup>19</sup>

With the expiration of the old Congress on March 4, 1913, and the inauguration of President Wilson, the relative roles of Wilson and Glass were temporarily reversed. While Mr. Glass continued to promote the development of his bill he was for the moment forced to accept a purely unofficial position. Pending the convening of a new Congress and the organization of a new banking committee his position was somewhat anomalous. Meanwhile the new Secretary of the Treasury, William G. McAdoo, was beginning to take an active interest in the future of banking legislation. Here it was that President Wilson by throwing his support back of Mr. Glass and utilizing the full potentialities of the presidency to make his will effective made

18 It is interesting to note that this first draft of the Glass bill had a provision guaranteeing bank deposits. When the issue of bank deposit guarantee came up in the banking bill of 1933 Senator Glass was no longer its sponsor.

19 Warburg states that as the campaign of 1912 developed Democratic members of the Citizen's League tried vainly to get Wilson to "express his views concerning the principles on which monetary reform should be based. Mr. Wilson remained silent and a puzzle to all. His views did not become publicly known until the Glass bill was fairly well advanced." p. 79.

the most vital contribution to its ultimate achievement. Without this backing Glass would have been impotent and the Glass bill would have gone into oblivion. To this extent the Federal Reserve Act owes its very existence to the President. Just how true this is may be seen from the events that took place during the special session called by the President for April 7, 1913. At this time the House of Representatives was still undergoing a reaction from the Revolution of 1910-1911 and was groping its way toward a new system of organization and control. The Democratic party had placed virtually autocratic control in the hands of the Ways and Means Committee. For several reasons the leaders decided that it was not expedient to organize the other committees of the House during the special session. This would facilitate the enactment of tariff legislation to which the party was committed by the platform and would defer other legislation until the regular session. There is some evidence that conservative opposition to Mr. Glass who was slated to become chairman of the banking committee was an additional factor in dictating the delay. President Wilson was obliged to decide whether he wanted banking legislation during the special session and if so to take the necessary action. His action to do so was the first step toward setting in motion the machinery from which the Federal Reserve Act was to come some six months later. He used the enormous political power then at his command to direct the appointment of a House Banking and Currency Committee and exerted no little pressure to dictate at least part of its membership.<sup>20</sup>

Shortly thereafter as a result of conferences participated in by President Wilson, Secretary McAdoo, Representative Glass, and Senator Robert L. Owen, Chairman of the Senate Committee on Banking and Currency, several rather important modifications were made in the bill. These were dictated by Mr. Wilson largely at the suggestion of Mr. Bryan and constituted, in a sense, concessions in return for Bryan's support of the measure as a whole. It must be said that the President had been won

<sup>20</sup> *Ibid.*, p. 262.

over to the wisdom of these changes; it was chiefly through his ardent presentation and defense of them that Mr. Glass accepted them although not without some reluctance. Chief among these changes was the clause providing that all members of the Federal Reserve Board should be appointed by the President. The original bill had provided that part of the members should be chosen by the banks themselves. A second change provided that Federal Reserve Notes should be "obligations of the United States."

The bill in this revised form was then submitted to the entire committee where it underwent considerable rewriting before it was reported back to the House.<sup>21</sup> Once more the skillful hand of the President was evident. Before the House proceeded to debate the bank bill a caucus of the Democratic membership was called. For two days (September 11, 12, 1913) behind locked doors the matter was thoroughly aired before the caucus went on record favoring passage of the bill. This had the effect of binding the hands of many who otherwise would have undoubtedly opposed the bill on the floor. It came so early in the Wilson administration that many Democrats otherwise cool toward the bill were silenced by fear of damaging their party standing. In the ensuing debate Republican opposition was for the most part confined to details; virtually all amendments were rejected at the request of Mr. Glass. After debating the measure from September 14 to September 18, 1913, the House approved it on the latter day by a vote of 287 to 85.

The newly created Senate Banking and Currency Committee, under the chairmanship of Senator Robert L. Owen of Oklahoma, proceeded to hold hearings that lasted until October 25, 1913.<sup>22</sup> Senator Owen was not enthusiastic over the Glass bill but under the unremitting pressure now being exerted by President Wilson he gave it his support. Unable to muster a

21 H. Report 69, 63rd Cong., 1st Sess., September 19, 1913.

22 Hearings before the Senate Committee on Banking and Currency on H. R. 7837 (S. 2639), 63rd Cong., 1st Sess., September 2-October 25, 1913. 3200 pages.

majority behind any bill the committee finally reported the Glass bill as amended in committee, without any recommendation but accompanied by a memorandum signed by Chairman Owen and five others.<sup>23</sup> Numerous amendments had been added and not all of them were unimportant but they were not to prevail in the end.

Senator Owen opened debate on November 24, 1913, moving to amend the Glass bill (H. R. 7837) by striking out everything after the enacting clause and substituting the same bill as amended by the Senate Banking Committee. Several amendments were accepted from the floor but none of them were fundamental. It is doubtful whether the unusually extensive debate changed a half dozen votes, but it did serve the useful purpose of providing the country with a liberal if somewhat verbose education on the relative merits of centralized versus decentralized banking control. On December 17, the Senate reached a unanimous consent agreement that thereafter each speaker would be limited to fifteen minutes with final vote to be reached on December 19. The vote of 54 to 34 in favor of the bill was a complete victory for President Wilson for it had been feared only a few days earlier that his majority would not exceed two or three votes.

Mr. Wilson's influence could also be detected in the expeditious demeanor of the conference committee. The Democratic members of the conference committee went into seclusion, barring the Republicans until the details of the compromise should be worked out. The intangible but effective influences of party discipline were hovering in the atmosphere for although the House conferees accepted numerous changes the fundamentals of the Glass bill were virtually intact as the bill emerged for final consideration. The conference report was approved by the House 298 to 60; by the Senate 43 to 25.

The Federal Reserve Act became law when President Wilson affixed his signature to the bill in the presence of Mr. Glass, Senator Owen, and a few members of his Cabinet on December

<sup>23</sup> S. Report 133, 63rd Cong., 1st Sess., November 22, 1913.

23, 1913. Thus ended a struggle which had its immediate beginning during the summer months of 1912, more than a year and a half earlier, and whose initial origins extended back several years. The history of this bill should give pause to any one who glibly asserts that a particular act is the handiwork of this or that individual. Under our representative system of government the construction of a piece of major legislation is essentially a problem of cooperation and compromise. Certain individuals hold places of strategic importance and are thus particularly advantaged in the competition for influence; but their advantage is relative rather than absolute for they also must yield many times against their will. This seems to have been true in the case of all of the main figures in the struggle for a banking bill.

In this instance President Wilson was probably the only person whose contribution was absolutely indispensable to the bill's success. Without his resolute support no banking legislation of any kind would have been passed. But Mr. Glass had a fundamental part in the enactment of this particular law. Without Mr. Wilson there would have been no banking law at this time; without Mr. Glass there would not have been this particular banking law. The spirit and much of the substance of the Federal Reserve Act bears the imprint of Mr. Glass' ideas to a greater degree than those of Mr. Wilson. The chairman of the House Banking committee had the advantage of longer contact with banking problems and more intimate grasp of the internal complexities of actual banking organization and administration. Furthermore he was able to devote his entire attention to this single issue during the day-by-day struggle that was being waged. The approach of the President was more general, spasmodic, and political. He was forced to avoid being drawn into questions of detail unless significant issues of policy were involved. The effectiveness of this teamwork is demonstrated in the final act.

BANKING BILLS, 1930-1933, AND THE EMERGENCY  
BANKING ACT OF 1933

The banking crisis of March, 1933, found a situation in which congressional leaders were not only fully aroused to the nature of the danger but had in their possession much valuable information not to be found elsewhere. Both the Senate and the House banking committees had held extensive hearings in the years 1930, 1931, and 1932. As the depression following the crash of 1929 deepened, the weaknesses of our banking system became increasingly magnified by the steadily rising total of forced closings. President Hoover, Secretary Mellon, Undersecretary Mills, and the Federal Reserve Board made no public statements in support of banking reform, but murmurings were beginning to be heard in Congress.<sup>24</sup> Resolutions were passed by both houses early in 1930 directing their respective banking committees to conduct investigations.<sup>25</sup>

Senator Glass, long the single most potent figure in the vicissitudes of banking reform, introduced the first of a succession of banking bills on June 17, 1930, but no action was taken.<sup>26</sup>

The situation continued thus throughout 1930, 1931, and 1932. Three other Glass bills were introduced in the Senate.<sup>27</sup>

<sup>24</sup> Hoover had shown himself unfavorable to reform from the beginning of his administration. Efforts to initiate banking legislation in the House soon after he took office were crushed by packing the banking committee. H. P. Willis and J. M. Chapman, *The Banking Situation*, p. 44.

<sup>25</sup> House Resolution No. 141, 71st Cong., 2nd Sess., February 10, 1930; Senate Resolution No. 71, 71st Cong., 2nd Sess., April 19, 1930.

<sup>26</sup> S. 4723, 71st Cong., 2nd Sess., the other banking bills introduced by Glass were: S. 3215, S. 4115, S. 4412, 72nd Cong., 1st Sess.; S. 245, S. 1631, 73rd Cong., 1st Sess. The latter bill became the Banking Act of 1933.

For a carefully documented account of the successive developments between 1929 and the enactment of the Banking Act of 1933, see Howard H. Preston, "The Banking Act of 1933," *American Economic Review*, vol. XXIII, 585-607 (December, 1933).

<sup>27</sup> S. 3215, 72nd Cong., 1st Sess., January, 1932; S. 4115, 72nd Cong., 1st Sess., March, 1932; S. 4412, 72nd Cong., 1st Sess., April, 1932.

The second of these was reported out but recommitted with his consent as the result of a demand by the American Bankers Association for hearings.<sup>28</sup> The third bill was reported out in April, but, due to the combined influence of the administration, the Federal Reserve Board, and a Senate filibuster, it was effectively blocked. Meanwhile, Representative Steagall had obtained favorable action in the House on a measure providing for insurance of bank deposits; but its chances of passing the Senate had never been good. This was the situation as the elections of 1932 came on.

President Hoover made only an occasional reference to banking reform during the 1932 campaign. Although Mr. Roosevelt was scarcely more specific, he assured Senator Glass of his interest in the banking bill. The Democratic victory thus seemed to insure the early passage of banking legislation.

Senator Glass reintroduced S. 4412 in the short session and the Senate passed it January 10, 1933, but the session ended without House action. When the New Deal was ushered in on the wings of the banking emergency, immediate action of a more sweeping nature was imperative. The Glass bill was temporarily side-tracked for the Emergency Banking Act which was rushed through Congress on March 10 with the debate in both houses taking less than four hours.<sup>29</sup> This bill was re-

<sup>28</sup> It is significant that from the beginning the banking bill became the object of strong opposition from organized banking. When it is remembered that the sponsors of banking reform had to combat not only such powerful organizations as the American Bankers Association, but the Federal Reserve Board, the Secretary of the Treasury, and the indifference of if not actual hostility of the President, the ultimate passage of the Glass-Steagall Act is nothing short of amazing.

<sup>29</sup> The Emergency Banking Act, drafted by Under-Secretary Arthur Ballantine, Senator Glass, Attorney-General Cummings, and Secretary Woodin, was referred immediately upon its introduction in the House of Representatives to the Committee of the Whole House on the State of the Union. In calling it up for debate Majority Leader Byrns requested unanimous consent that debate on the bill be limited to forty minutes, with no amendments permitted. The House passed the bill (H. R. 1491) without record vote and without ever seeing a copy of the bill. Only little more

garded as a stop-gap, purely temporary in character. In addition to granting approval to the action already taken by the President under the Trading with the Enemy Act of 1917, the new legislation empowered the Secretary of the Treasury, with the approval of the President, to suspend all banking operations during an emergency period. It also created machinery for the appointment of bank conservators to facilitate the reopening of banks which had been forced to close. In order to further ease the resumption of normal functions by the banks, provisions were incorporated whereby banking associations could, with the approval of the Comptroller of Currency, issue preferred stock and thus obtain financial aid for capital purposes from the Reconstruction Finance Corporation. Finally, Federal Reserve banks were permitted to issue additional currency under certain conditions.

#### THE GLASS-STEAGALL ACT OF 1933

With the signing of the Emergency Banking Act of March 9, 1933, the administration seemed to lose interest in banking legislation. The passage of the Glass-Steagall Act late in the special session was accomplished not only without administration support but in the face of a vacillating attitude of mingled hostility and indifference which contrasted strangely with the general impression of forthrightness commonly associated with the administration during this period.

Early in April Glass again turned to the bill that had passed the Senate as S. 4412 the previous January. In order to bring the bill into line with the strong inflationary sentiment which had steadily increased, Senator Glass introduced a provision for insurance of deposits, something that he personally did not approve.

From this point onward until the final passage of the bill on June 14 there emanated from the White House a weird and confusing series of contradictory statements alternately endors-

formality was observed in the Senate where it passed, 73 to 7, with 15 not voting, after less than three hours of debate. The bill was passed without amendment in both houses.



ing and attacking banking legislation in general, this bill in particular, insurance of deposits, and so on, until confusion was confounded. The files of the *New York Times* between April 8 and June 14 record the current of comment, thought, and prediction, as it ebbed and flowed, veered and tacked, throughout the spring months of 1933.

On April 8, 1933, under the headlines: "Insuring of Bank Deposits By a Fund of \$2,000,000,000 Planned by Roosevelt Bill" it was reported that the new bill represented a compromise between the more conservative views of Senator Glass and the considerably more liberal ones of Representative Steagall. "According to Mr. Steagall, the President favors the plan in principle, leaving the details to be worked out by the two congressional banking experts. The President was represented as gratified by the apparent fact that Mr. Glass and Mr. Steagall have compromised their hitherto divergent views."<sup>30</sup>

Mr. Steagall was quoted again the following day, "You may say that the proposal's principle [deposit insurance] is understood to have the approval of the administration."<sup>31</sup>

But by the middle of the following week something had occurred or the President had experienced a change of heart; for the *Times* carried a long story following a conference attended by Senator Glass, the President, and Secretary Woodin. The account indicates the general confusion surrounding the whole matter. President Roosevelt and his Secretary of the Treasury were reported "to be opposed but not irrevocably to bank deposit insurance as provided in the revised Glass banking bill," because they were against "debasing the currency or any radical monetary changes."<sup>32</sup> The dispatch continued, "In the confusion over the bill it was stated authoritatively by aides of the President that he has taken no final action on the proposal for insurance of deposits, and does not expect to for two or three weeks pending study."

<sup>30</sup> *New York Times*, April 8, 1933, p. 1.

<sup>31</sup> *Ibid.*, April 9, 1933, II, p. 9.

<sup>32</sup> *Ibid.*, April 12, 1933, p. 1.

And finally, the same day, "The conflict of reports was heightened when Gilbert M. Hitchcock, former Nebraska Senator, emerged from the White House after a conference and said the President favored the insurance clause, but authoritative word to the contrary came from congressional sources."<sup>33</sup>

Dogged determination is manifest in the next dispatches which reported that Senator Glass and his subcommittee were forging ahead on the bill "unmindful of whether the administration favors or opposes the proposal at this time."<sup>34</sup>

Little more except a confirmation of the vague unfriendliness of the administration can be gleaned from the report of Secretary Woodin's appearance before Senator Glass and his subcommittee on April 21:

The Glass bill seemed suspended in thin air after an executive session of the subcommittee attended by Woodin who was, if not hostile, at least luke warm. Whether Secretary Woodin's position reflected the attitude of the White House was not made definite, but Mr. Woodin impressed upon the subcommittee the necessity of not proceeding too hastily. He pointed out that the administration is now engaged with other serious problems and cannot give its full time and thought to the banking bill.<sup>35</sup>

All this might have been taken to indicate that the President had definitely decided against bank legislation for the special session; his apparent indecisiveness might well have been attributed to his desire to let its supporters down as easily as possible. But three days later this hypothesis was shot to bits when the President gave the Glass bill a new lease on life by pausing in the midst of his international conferences with Ramsay MacDonald and Edouard Herriot for a session with Senator Glass, at which he was reported to have approved a limited form of deposit insurance. At the close of this conference

<sup>33</sup> *Ibid.*

<sup>34</sup> *Ibid.*, April 18, 1933, p. 21.

<sup>35</sup> *Ibid.*, April 22, 1933, p. 6.

Senator Glass said, "The President is going along nicely with us on the bank bill."<sup>36</sup>

Ten days later the President's position which had momentarily seemed to be both definite and favorable had again become obscured. At a conference with administration leaders Secretary Woodin again expressed opposition to the bill. The report continued:

In the conference, in which views were exchanged freely, it was said that the President maintained an impartial attitude and did not give any indication of his position. His advisors say that while he favors the measure, which falls within the scope of his proposed bank reforms, he is inclined to believe that an attempt to pass it now would prevent Congress from adjourning early in June.<sup>37</sup>

But, the following day, the inevitable contradiction appeared. After another conference the President was again reported as in favor of pushing the bank bill. "President Roosevelt, it was learned, promised Mr. Glass at the White House conference yesterday, that he would stand back of a move to put the bill through the Senate at this time."<sup>38</sup> This was confirmed a few days later when Glass was reported to have received renewed promises of President Roosevelt's support and his consent to present the bill the following day.<sup>39</sup>

The end was not yet, for when the "following day" arrived it brought new tidings but not glad ones from the White House. Under the headline "Roosevelt Cool Now on Bank Bill" appeared a Washington dispatch reporting as follows:

In the face of a White House statement that President Roosevelt was not committed to passage of banking legislation at this session of Congress, bills to correct the abuses that have grown up in the banking world and to insure deposits

<sup>36</sup> *Ibid.*, April 25, 1933, p. 2.

<sup>37</sup> *Ibid.*, May 5, 1933, p. 27.

<sup>38</sup> *Ibid.*, May 6, 1933, p. 19.

<sup>39</sup> *Ibid.*, May 10, 1933, p. 23.

were introduced by Senator Glass and Representative Steagall late this afternoon.

Earlier in the day the President said some of the features of the Glass bill might have to be simplified or eliminated. At the same time he indicated that it had not been positively set down as part of the administration program.

Nevertheless, Senator Glass, who gained an impression yesterday that the President would support his measure, introduced it, and Mr. Steagall followed suit almost immediately.<sup>40</sup>

Introduction of the new bills was followed by a ten-day period of silence, the only important development being the appearance of the Vandenberg amendment providing for the immediate guarantee of deposits in all banks up to the sum of \$2500. White House reaction to this proposal was not made known immediately although rumor ran that strong disfavor toward it existed. Evidence that no official action had been taken was provided by Speaker Rainey's statement to the press on May 20: "I have no information directly from the President to that effect, but I have reason to believe that if it goes through he will accept it."<sup>41</sup>

Shortly thereafter, and without further public expression from the administration, the Steagall bill passed the House without important amendments by a standing vote of 262 to 19.<sup>42</sup> Three days later the Senate by viva voce vote passed the Glass bill carrying the Vandenberg amendment.

Even at this late stage in the game the position of the President was apparently not yet so crystal clear that intelligent persons could come away from conversations with him without widely varying conceptions of his true attitude. For after a White House conference on June 1 on the banking bill Senator Glass asserted that the Vandenberg amendment would remain

<sup>40</sup> *Ibid.*, May 11, 1933, p. 3., S. 1631 and H. R. 5661, 73rd Cong., 1st Sess.

<sup>41</sup> *Ibid.*, May 21, 1933, p. 5.

<sup>42</sup> *Ibid.*, May 24, 1933, p. 29.

but Representative Steagall was equally positive that it would not.

Five days later, on June 5, a letter from the President to Senator Glass carried the blunt ultimatum that he would veto the bank bill if the Vandenberg amendment remained. This appeared to be the death warrant for Senator Vandenberg was insistent upon his amendment and there appeared to be sufficient congressional sentiment aroused by this time to sustain him in his position. The *Times* reported, "That the Glass-Steagall bill is in great difficulty is admitted on all sides. General opinion is that it is doomed and will die in conference so that it will not be considered until Congress meets again next January."<sup>43</sup>

Subsequent dispatches seemed to indicate that a process of disintegration had set in; the various groups concerned appeared to be growing farther apart with the chances of any action on the bill vanishing rapidly. On June 7 the President was rumored to have approved the Vandenberg amendment provided it should go into effect January 1, 1934, instead of immediately. At this time a majority of the Senate conferees, voted to drop all insurance plans but the House conferees refused to yield. By June 8 Representative Steagall, now thoroughly discouraged, confirmed the general impression of stalemate. He added, "Because of this situation it might be better to delay a conference report until next session. I understand that Senator Vandenberg is ready to filibuster if we don't adopt his amendment making the insurance effective immediately. We can't do that."<sup>44</sup>

This seemed to mark the end of the bank bill. It would have, had the President succeeded in getting Congress to adjourn on Saturday, June 10. The revolt of the veterans' bloc thwarted his plan, however, and this added week gave the bank bill just the reprieve it needed. A conference report incorporating the Vandenberg amendment, but postponing its operation for six

<sup>43</sup> *Ibid.*, June 6, 1933, p. 1.

<sup>44</sup> *Ibid.*, June 9, 1933, p. 3.

months with the qualification that it could be initiated sooner upon the President's order, was quickly accepted by both houses on June 14.<sup>45</sup> Three days later amidst photographers and reporters the President, in the presence of Senator Glass and Representative Steagall, added the final touch by signing the bill with the comment that it was the best legislation of its kind since the adoption of the Federal Reserve Act.<sup>46</sup>

The uncertain character of executive leadership in respect of the banking legislation of 1933 has been traced. There remains the task of outlining briefly the genesis of the Glass-Steagall Act, and of examining the chief elements entering into its final passage. Here was a bill that in every sense of the word was legislative in its derivation. Its two chief authors had been carrying most of its provisions in their heads for years.<sup>47</sup> Much of the actual language in the bill had been dictated by them, particularly by Senator Glass.

Sentiment in Congress was not especially responsive to general banking legislation after the subsidence of the threatened

45 S. Report 77, 73rd Cong., 1st Sess., June 13, 1933.

46 The impressions conveyed by the running account excerpted from the *New York Times* are confirmed by Ernest Lindley and the *New Republic*. See Ernest Lindley, *The Roosevelt Revolution* (New York, Viking Press, 1933), pp. 143-144; also *The New Republic*, LXXIV, 334 (May 3, 1933); LXXV, 46 (May 24, 1933), p. 110 (June 14, 1933), p. 168 (June 28, 1933).

47 After serving as Secretary of the Treasury under Woodrow Wilson, Senator Glass had returned to Congress where he immediately became a dominant force in the banking committee. His interest in banking reform and his systematic study of it extended back into the period preceding the Federal Reserve Act. The features of the Glass-Steagall Act were not new; they were the result of years of study and observation of banking practice here and elsewhere.

Similarly, Representative Steagall, with eighteen years' service on the House banking committee, was no tyro in this field. His abiding interest in and study of the possibilities of deposit insurance are illustrated by the fact that he discussed its possibilities in his campaign for office in 1920 and actually introduced a bill in the House in 1923 providing for the establishment of a deposit guarantee system.

Other members of Congress, among them, Senators Fletcher, Norbeck, and Couzens, and Representatives Goldsborough, Luce, and Beedy, had also developed authoritative understanding of banking problems, but it is fairly safe to say that Glass and Steagall were in a class by themselves.

panic of early March. Passage of the Emergency Banking Act on March 9 had been followed by such heartening results in reopening of banks and restoration of confidence that the average congressman was glad for the moment to let well enough alone. True, there was a mounting clamor for some form of securing bank deposits but banking legislation was not among the hot issues pressing for immediate action. Furthermore the likelihood of the banking-minded supporters in the House and the Senate joining forces so as to provide a single unified plan was considered less than fair, for wide divergencies of view separated Representative Steagall and Senator Glass.<sup>48</sup> The former, a "little bank" man approached the subject from the viewpoint of the small bank, whether national or state. His chief interest was guarantee of deposits so as to protect the small depositor. He was definitely opposed to greater centralization of banking control and thus was at variance with perhaps the single chief objective of Senator Glass—extension of branch banking so as to eliminate the dangers inherent in multitudinous small weak banks. Glass on the other hand had frequently expressed his opposition to deposit guarantees. Because the two bills reflected the variant views of their authors, the prospects for concerted action from Congress seemed anything but auspicious. The differences, while not irreconcilable, would require negotiation and this demanded more time than remained before adjournment upon the date already set by the President. Furthermore, congressional interest had shifted away from banking legislation. Quite by accident two external events were chiefly responsible for the bill's survival.<sup>49</sup>

The first of these two events occurred when another subcommittee of the Senate Committee on Banking and Currency which had been investigating investment banking for some time suddenly began to monopolize the headlines. Some sensational revelations involving the almost legendary House of Morgan generated a sense of public resentment against bank-

<sup>48</sup> Preston, *op. cit.*, p. 599.

<sup>49</sup> Lindley, *op. cit.*, pp. 143-144; Willis and Chapman, *op. cit.*, 101-102.

ers. This sentiment was more emotional than reasoned, and, as a matter of fact, almost completely irrelevant to the pending banking bill but by reviving both public and congressional interest in banking it was a potent factor in its passage. Coupled with the week's extension of the special session, because of Roosevelt's encounter with the veterans' bloc, it was just enough to rescue the bill from the conference committee where it would surely have died in the normal course of events. Both Glass and Steagall yielded sufficiently for a compromise measure to be framed and agreed upon. Thus the Glass-Steagall Banking Act of 1933, "the best legislation of its kind since the adoption of the Federal Reserve Act," became law.

Here, then, was a bill in which the influence of the administration was small indeed. A provision in the original bill barring the Secretary of the Treasury from the Federal Reserve Board had to be eliminated because of the insistence of Secretary Woodin. This and the compromise on the beginning date of deposit insurance whereby it was postponed from July 1, 1933, to January 1, 1934, comprise the essence of this influence.<sup>50</sup>

Considerable criticism has been leveled at the Glass-Steagall Act; it has come in for attack principally on the ground that it failed to go far enough. Critics point out that here was an opportunity to put through a comprehensive regulatory act that would effectively eliminate the abuses which had grown up since the World War, but it was muffed and the golden opportunity was lost.

Upon the administration must fall the major portion of responsibility for the deficiencies of the act that was passed. The relative preoccupation of each house with only certain rather popular phases of the act, particularly deposit insurance and the divorce of investment from commercial banking, made it inevitable that some of the most fundamental phases would slip by unnoticed unless forcibly pressed. It is here that the admin-

<sup>50</sup> The Federal Reserve Board had been hostile to the several Glass bills. See, for example, the *Federal Reserve Bulletin*, April, 1932, pp. 206-222.



istration, by its failure to put itself behind a definite program, not only flubbed the banking act but dodged responsibility "by substituting the politics of maneuver for the politics of policy."

The demeanor of the executive is not indefensible and certainly can be explained. In the first place the special session was originally called to perform much more restricted functions than it eventually undertook. The initial plan was that it should pass the emergency banking law and then adjourn. Pressure of events necessitated additional legislation until what had started out to be a few days' or a week's session actually extended over three months. On the basis of this original premise the temporary sidetracking of the banking problem is understandable. As each succeeding issue forced itself upon the center of the stage—economy, agriculture, business, unemployment, etc.—executive attention was monopolized to the necessary exclusion of less pressing, though not less important, matters.<sup>51</sup> The ready flexibility of Roosevelt's methods of work, in some instances a valuable asset, did not show to advantage here. Finally, if one accepts the administration premise that the banking bill was not emergency legislation, and that nothing outside this category was to be presented to the Congress at this session, the week-by-week shift of ground is more easily understood.

The history of the banking law wholly aside from its immediate context has broad significance in view of its implications for it illustrates vividly one of the functional weaknesses of our constitutional system. President Roosevelt was generally agreed to be a skillful political strategist and tactician. Furthermore, his control of Congress during the hundred-day special session far surpassed that which presidents can normally expect to exert. Yet even under these favorable circumstances he found his hand forced; he was compelled to accept important

<sup>51</sup> It is important to keep in mind that the President was carrying on during this period with a very small staff of advisers and assistants. Each new problem tended during this period to absorb the energies of his entire staff.

legislation before he had time to determine what should be done, and the results were not impressive.

### THE THOMAS AMENDMENT—1933

As the financial crisis became more intense during the closing months of 1932, the pressure within Congress for inflationary measures of some kind grew steadily stronger. This movement was widespread; although its main impetus came from the southern and western congressmen it drew support from all sections of the country.

On January 3, 1933, Senator Borah stated that he planned to introduce legislation to reduce the purchasing power of the dollar.<sup>52</sup> Without revealing the terms of his bill the Idaho Senator indicated that he would probably introduce it as amendment to some important bill then under discussion. Senator Bankhead endorsed Borah's plan. Senator Wheeler of Montana reminded the Senate that he had introduced a bill for the remonetization of silver a year before but had not succeeded in getting the Finance Committee to report it out. Numerous bills for remonetizing silver were introduced during this period. Senator Dill of Washington introduced such a measure on January 9, 1933, with the statement that it was the soundest thing of its kind.<sup>53</sup> He added, "It does not violate any of the present principles of currency." Senator Smoot of Utah, the ultra conservative chairman of the Senate Committee on Finance, backed the movement to remonetize silver and stated on January 8 that he was going to offer such a bill in the near future.<sup>54</sup> On January 16, Senator Thomas of Oklahoma sought unsuccessfully to offer an amendment to the Glass banking bill whereby the dollar would be devalued.<sup>55</sup> On January 22 Rep-

<sup>52</sup> *New York Times*, January 4, 1933, p. 1.

<sup>53</sup> S. 5342, 72nd Cong., 2nd Sess.

<sup>54</sup> *New York Times*, January 9, 1934, p. 3.

<sup>55</sup> Thomas offered a resolution, S. Resolution 328, 72nd Cong., 2nd Sess. to appoint a committee of 27 Senators to suggest a plan to devalue the dollar.

representative Rainey voiced his approval of inflation and Senator Borah reiterated his support.<sup>56</sup> On January 17 Chairman Steagall of the House Committee on Banking and Currency introduced his proposal to purchase silver at the prevailing market price and issue silver certificates in comparable amounts.<sup>57</sup>

During the debate on the Glass bill in the Senate on January 23, 1933, Senator Wheeler offered an amendment calling for the unlimited coinage of silver at the ratio of 16 to 1. This was followed immediately by a similar amendment offered by Senator Long, but reducing the ratio to 14 to 1. On the motion of Senator Glass both of these motions were tabled on January 24 by a vote of 56 to 18 which cut squarely across party lines, 32 Republicans and 24 Democrats voting for the motion, with 6 Republicans and 12 Democrats opposing. On January 25, 1933, Senator Connally advocated devaluation by reducing the gold content of the dollar. His proposal was sharply opposed by Senator Glass.<sup>58</sup>

The events of the last few weeks of the Hoover administration and the opening of the Roosevelt administration served to draw attention temporarily from the money issue to the more immediate problem of reopening the banks. But the respite was only temporary. On February 3, 1933, Chairman Somers of the House Committee on Coinage, Weights, and Measures said that his committee was writing a 16 to 1 silver bill.<sup>59</sup> On April 3, 1933, Senator Connally introduced a bill to reduce the gold content of the dollar by one-third;<sup>60</sup> several other congressmen indicated their intention of backing similar legislation. It became evident that the inflation philosophy had gained a strong hold on the public when the Committee for the Nation, representing some 300 industrial leaders, came out on April 5 urging

<sup>56</sup> *New York Times*, January 23, p. 1.

<sup>57</sup> H. R. 14281, 72nd Cong., 2nd Sess.

<sup>58</sup> *New York Times*, January 25, 1933, p. 1.

<sup>59</sup> *Ibid.*, February 5, 1933, p. 9.

<sup>60</sup> S. 1111, 7th Cong., 1st Sess.

gold revaluation.<sup>61</sup> This group was not composed of radicals; among its membership were the high officials of such firms as Remington Rand, Bendix Corporation, Sears, Roebuck and Company, etc.

To meet this threat and control it rather than let it get entirely out of hand as it threatened to do so if left alone, the Roosevelt administration suddenly decided to act. The defeat in the Senate of the Wheeler amendment to the agricultural relief bill by the narrow margin of 43 to 33 on April 17, was a warning that the inflationists were not to be denied. In fact, there is some evidence that this amendment, providing for the free coinage of silver, would have passed had not administration representatives assured several senators that an administration devaluation measure was to be offered.<sup>62</sup>

On April 20, 1933, Senator Thomas of Oklahoma introduced the inflation provision as an amendment to the agricultural relief bill then under consideration. The exact details behind the preparation of this measure have been a matter of some controversy but the essential facts are fairly well agreed upon. About April 18, Mr. Roosevelt decided in favor of some type of currency inflation. Conferences were held between administration leaders and the leaders of the inflation bloc in the Senate and the details of the amendment were worked out jointly. This amendment, which was a compromise on the part of both sides, was introduced and approved with only one important change—the Pittman amendment which provided that the national government accept up to \$200,000,000 in silver from foreign debtors at not more than 50 cents an ounce.<sup>63</sup>

Senator Thomas offered his amendment to the agriculture relief bill (H. R. 3835) on April 20, 1933. The Banking Com-

<sup>61</sup> *Commercial and Financial Chronicle*, CXXXVI, 2525 (April 15, 1933).

<sup>62</sup> R. Moley, *After Seven Years*, (New York, Harper and Brothers, 1939), p. 158.

<sup>63</sup> According to Moley, it was decided April 18, at a bedside conference at the White House between Roosevelt, Moley, and Senator James Byrnes, to accept the Thomas amendment. The actual drafting was done on April 19 and 20, in the office of the Senate Committee on Foreign Relations by Moley, Pittman, Byrnes, and a couple of draftsmen. Moley, *op. cit.*, p. 160.

mittee approved the amendment without a record vote but the gold devaluation provision was opposed by Glass, Fletcher, Gore, McAdoo, and six Republican committee members.<sup>64</sup> The committee reported the amendment favorably with minor changes on April 21, with the recommendation that it be considered not as an amendment to the agriculture bill but as a separate measure.<sup>65</sup>

Senator Robinson, the Majority Floor Leader, stated to the Senate that the administration wanted action on the measure one way or another and warned that if a filibuster was attempted he was prepared to invoke the closure rule. In a prolonged debate, notable chiefly for the impassioned opposition to devaluation voiced by Senator Glass, the Senate took a recess from its consideration of the agriculture bill and examined the entire money question at length. Senator Glass reminded the Senate that he had personally written the sound currency plank of the 1932 Democratic platform and he reviewed the events that had occurred. In the single speech made by him during the presidential campaign he had reproached President Hoover and Secretary of the Treasury Mills for saying that the country was within two weeks of going off the gold standard. The public reaction to this speech had been overwhelmingly favorable; he had received 5000 messages of approval, including one from Franklin D. Roosevelt saying that the speech was an inspiration to him.<sup>66</sup> This fiery appeal won the applause of the entire Senate but it was less successful in marshalling votes; the Thomas amendment was approved later that same day 53 to 35 and the following day the Senate approved the farm bill 64 to 20.

The House approved the Thomas amendment, 307 to 86 on May 3. The conference report made no changes in this section inasmuch as it had already been approved by both houses. The

64 *Commercial and Financial Chronicle*, CXXXVI, 2718 (April 22, 1933).

65 S. Report 40, 73rd Cong., 1st Sess., April 21, 1933.

66 *Commercial and Financial Chronicle*, CXXXVI, 2897 (April 29, 1933).

President signed the agriculture bill on May 12, 1933, and the dollar devaluation provision had become law. Its final form bore the imprint of the presidential hand but the hand had not acted voluntarily. The *New York Times* summarized the situation succinctly when it reported Roosevelt's decision to ask for inflationary legislation:

While in effect the President has surrendered to the insistence of Westerners and Southerners clamoring for currency inflation to aid farm relief he has done it on his own terms. In place of legislative inflation, which necessarily would be of an inflexible character and probably contain many dangerous phases, the President consented to accept wide powers to change the currency system.<sup>67</sup>

#### THE GOLD RESERVE ACT OF 1934

Although the Gold Reserve Act of 1934 has commonly been identified as an administration measure its actual origin differed from that of the Thomas amendment in degree rather than in kind. The inflationist bloc in Congress had received only temporary comfort from the Thomas amendment. As prices failed to exhibit the buoyance that administration leaders had hoped would follow in the wake of the 1933 legislation, pressure for further remedial steps intensified. Confronted with the necessity of taking action of some sort, the President began to consider the various possibilities. At the moment he was favorably impressed with the monetary theories of that group of which Professor George F. Warren of Cornell was the chief spokesman. This was convenient because the Warren theories though posited on different grounds than the various inflationary proposals then in circulation harmonized in general pattern. A sudden intensification of inflation activity in Congress early in 1934 left no doubt that it would be dangerous to temporize longer. On January 1, 1934, Senator Thomas of Oklahoma indicated that he intended to press for immediate gold devalu-

<sup>67</sup> *New York Times*, April 21, 1933, p. 3.

<sup>68</sup> *Ibid.*, January 1, 1934, p. 4.

ation.<sup>68</sup> Two days later Senator Thomas and Representative Rankin of Mississippi were reported to be formulating a bill directing the Treasury to take over the gold held by the Federal Reserve banks.<sup>69</sup> Another silver remonetization bill announced by Senator Wheeler on January 4 gave further evidence that things were beginning to move.<sup>70</sup> If he was not to lose the initiative Mr. Roosevelt had to act.

Under the powers given him by the Thomas amendment he already had full authority to reduce the gold content of the dollar by more than half. His conferences with Mr. Warren convinced him that beneficial results might be expected from such a step, and certainly Congress was prepared to support this course. But there were other considerations not so favorable. In his exploratory discussions with his chief financial officers he encountered stiff opposition to any kind of monetary manipulation, particularly devaluation of the currency. His own appointee as Governor of the Federal Reserve Board, Eugene R. Black, held out against such action unless Congress by specific legislation authorized it. Lewis W. Douglas, Director of the Budget, was unqualifiedly opposed, as were Senator Glass, Senator McAdoo, and others. The President decided to throw the issue into the lap of Congress. On January 14, he held a conference on money, attended by congressional leaders of both parties and Secretary of the Treasury Morgenthau. The following day he sent to Congress a special message asking for specific authority to revalue the dollar. He explained that although he already had such power under the Thomas amendment the importance of such a step constrained him to ask for congressional approval.

A bill drafted in the Treasury accompanied the message.<sup>71</sup> It was introduced in the House by John W. Somers, Chairman of the House Committee on Coinage, Weights, and Measures, on January 16. After some dispute as to jurisdiction the bill

<sup>68</sup> *Ibid.*, January 3, p. 27.

<sup>70</sup> *Ibid.*, January 5, p. 17.

<sup>71</sup> H. R. 6987, 63rd Cong., 2nd Sess.

was referred to the Coinage, Weights and Measures Committee over the protests of Chairman Steagall of the Banking and Currency Committee. Hearings were held for five days between January 15 and January 20 with the great majority of those appearing opposing the bill.<sup>72</sup>

The Coinage Committee reported the bill favorably on January 18,<sup>73</sup> and on the 20th after a desultory debate during which all amendments were rejected, the House approved the measure, 360 to 40, and sent it along to the Senate where the Banking and Currency Committee was already holding hearings.<sup>74</sup> The pattern here was similar to that of the House committee hearings except that Senator Glass was present to give aid and comfort to those who opposed the bill. The Senate Banking Committee reported the bill favorably, 15 to 2, attaching two amendments insisted upon by Senators Glass and Bulkley. One placed a three-year limit upon the powers granted; the other transferred control of the stabilization fund provided for in the bill from the Secretary of the Treasury to a board of five members composed of the Secretary of the Treasury, the Governor of the Federal Reserve Board, the Comptroller of Currency, and two to be appointed by the President.<sup>75</sup>

Senate debate began the following day. It had been reported in the press that during a conference with Majority Leader Robinson the President had indicated that he was willing to accept the time limitation imposed by the Senate committee but would insist upon retaining the original provision placing control of the stabilization fund in the hands of the Secretary of

<sup>72</sup> Hearings before the House Committee on Coinage, Weights, and Measures, on H. R. 6976, 73rd Cong., 2nd Sess., January 15-20, 1934. 178 pages.

<sup>73</sup> H. Report 292, 73rd Cong., 2nd Sess., January 18, 1934.

<sup>74</sup> Hearings before the Senate Committee on Banking and Currency on S. 2366, 73rd Cong., 2nd Sess., January 19-23, 1934. 389 pages. This Committee had actually held hearings for two days before January 19. Although these were executive in nature rather full reports of what transpired were carried in the daily press. See the *New York Times*, January 18, 19, 1934.

<sup>75</sup> S. Report 201, 73rd Cong., 2nd Sess., January 23, 1934.



the Treasury.<sup>76</sup> Attacks upon the bill came from two quarters. Senator Glass insisted that the measure was a blow at the integrity of the Federal Reserve System; similar arguments came from those who regarded it as a radical and dangerous departure from sound finance. On the other hand there were those who criticized the bill because it did not go far enough. Typical of these was Senator Thomas of Oklahoma who offered an amendment to remonetize silver at a 16 to 1 ratio. This amendment was defeated by the narrow margin of 45 to 43.<sup>77</sup> Administration forces succeeded in striking out the amendment denying the Secretary of the Treasury absolute management of the stabilization fund, 54 to 36, although several Democrats voted to retain the provision.<sup>78</sup> On January 27, after a debate filling one hundred pages of the *Congressional Record*, the Senate approved the Gold Reserve bill, 66 to 23. The House concurred in the Senate amendments on January 29 and the President signed the bill on January 30, 1934. This had been an administration bill from start to finish but again congressional influence was a factor.

#### THE SILVER PURCHASE ACT OF 1934

If the President hoped that the Gold Reserve Act would quiet the demands of the silver bloc he was doomed to disappointment. Dollar devaluation acted as a "come-on" rather than a deterrent; it simply showed that the time was ripe "to discard all of the outworn superstitions in which our monetary ideas had been embalmed." In the Spring of 1932 and again in the early part of 1933 the House Coinage Committee had held hearings on silver and had considered a dozen bills introduced by Senators Bankhead, Pittman, Wheeler, and Representatives Bankhead, Cross, and others.<sup>79</sup> The more conservative leader-

<sup>76</sup> *Commercial and Financial Chronicle*, CXXXVIII, 609 (January 27, 1934).

<sup>77</sup> *Congressional Record*, 73rd Cong., 2nd Sess., p. 1464, January 27, 1934.

<sup>78</sup> *Ibid.*, p. 1405, January 26, 1934.

<sup>79</sup> House Committee on Coinage, Weights, and Measures, hearings on various bills dealing with silver, 72nd Cong., 2nd Sess., February 1-10, 1933. 241 pages.

ship of the Senate Committee on Banking and Currency had blocked similar hearings but when Senator Wheeler's " 16 to 1 " amendment to the Gold Reserve bill failed by the narrow margin of two votes on January 27, 1934, both the advocates and the opponents of silver knew that legislation was not far off.

Representative Martin Dies of Texas made the next move for the silver bloc when he introduced a bill on February 2, 1934, providing for a board composed of the President, and the Secretaries of the Treasury, Commerce, and Agriculture to negotiate with foreign buyers of surplus agricultural products and to accept payment in silver.<sup>80</sup> Shortly, thereafter, it was rumored that the administration was working on a plan for partial remonetization of silver in the hope of averting a fight in Congress.<sup>81</sup> No further word came from the administration as the silver people proceeded with their plans. On March 1, Secretary Morgenthau in an interview urged delay of all monetary legislation,<sup>82</sup> and when the House Currency Committee reported the Dies bill favorably on March 16,<sup>83</sup> Mr. Morgenthau sought to discourage its consideration by a second statement to the press in which he made it clear that the administration did not desire additional silver legislation.<sup>84</sup> Congressional response was instantaneous but adverse. Among expressions of resentment at the unsolicited opinion of the Secretary, the House debated and passed the Dies bill on March 19, by a vote of 258 to 112.<sup>85</sup> It seems likely that the administration underestimated the support behind the bill until too late, but it now became thoroughly aroused. Immediate pressure was exerted to prevent Speaker Rainey from calling up the Fiesinger Silver Purchase bill which authorized the Treasury to purchase one

80 H. R. 7581, 73rd Cong., 2nd Sess.

81 *New York Times*, February 11, 1934, p. 3.

82 *Ibid.*, March 2, p. 1.

83 H. Report 992, 73rd Cong., 2nd Sess., March 16, 1934.

84 *New York Times*, March 16, 1934, p. 31.

85 *Ibid.*, March 20, 1934, p. 1.

and a half billion ounces of silver for a reserve against silver currency. The Dies bill was referred to the Senate Committee on Agriculture and Forestry which reported it favorably with important amendments by Senators Thomas and Wheeler.<sup>86</sup>

Despite the rumor that the Dies bill with the Senate amendments had the united support of all the silver congressmen there was no indication of a change of heart at the White House. A conference of congressional leaders was called for April 16 to discuss the legislative program for the remainder of the session, but word was circulated that silver would not be mentioned.<sup>87</sup> No presidential statement was given out after the conference. Speaker Rainey reported that Mr. Roosevelt was still against silver legislation and would veto the Dies bill if it passed the Senate.<sup>88</sup>

For the next month the struggle continued to see-saw back and forth. The President insisted that under the Thomas amendment he already had all the power necessary and that he preferred no further legislation this session; the silverites in the House countered by attaching a rider to the Goldsborough monetary bill requiring the Treasury to purchase one billion ounces of silver at the rate of not less than 50 million ounces a month.<sup>89</sup> Meanwhile the Senate silver group agreed that the Dies bill must be passed in mandatory form. There was some hint that the congressional will was beginning to prevail when it was announced early in May that the President had invited members of the silver bloc to meet with him on the fifth and eighth of that month. At the first of these conferences he indicated that eventually he would be willing to permit silver to constitute thirty per cent of the total reserves instead of the twelve per cent at which it now stood. This was a promise for the future, however, and did not apply to the present. On May

<sup>86</sup> S. Report, 73rd Cong., 2nd Sess., April 10, 1934. This report was the result of hearings held from March 27 to April 2, 1934.

<sup>87</sup> *New York Times*, April 15, 1934, p. 3.

<sup>88</sup> *New York Herald-Tribune*, April 17, 1934.

<sup>89</sup> *Commercial and Financial Chronicle*, CXXXVIII, 2846 (April 28, 1934).

8, a further suggestion of progress might be detected in the announcement that while the President was still opposing a mandatory measure he was now willing to consider an optional one.<sup>90</sup>

Time was with the silverites, however. It had been the hope of the administration that Congress could be persuaded to complete its labors and adjourn by the middle of May. Furthermore, there were several important bills on the President's "must" list that were making no headway under the present stalemate. Finally, on May 16, a conference at the White House was attended by nine of the leading Senate advocates of silver legislation. At its conclusion the White House announced that within a day or two the President would send a message to Congress recommending silver legislation. The bill to effectuate his recommendations was being drafted by Herman Oliphant, General Counsel of the Treasury. The newspaper report stated that Senator Borah, spokesman for the group, seemed pleased.<sup>91</sup>

The President sent his silver message to Congress on May 22, 1934, accompanied by a bill.<sup>92</sup> Stating that the proposed legislation was to be known as the Silver Purchase Act of 1934, the message recommended legislation declaring it to be the policy of the United States to purchase silver until the ratio of silver to gold was 1 to 3. It also imposed a tax of 50 per cent upon the profits accruing from dealing in silver as a result of this law. Senator Thomas criticized the proposal. He explained that silver was not made money under the bill, and contended that it was a tax measure rather than a monetary one. Both he and Borah charged that it fell short of their expectations because it did not make silver "primary money" but still left it as "token money."

<sup>90</sup> *New York Times*, May 10, 1934, p. 1.

<sup>91</sup> *Ibid.*, May 17, p. 1. The Senators attending were Borah, King, Pittman, Wheeler, Thomas of Oklahoma, Shipstead, McCarran, Smith, and Adams.

<sup>92</sup> *Ibid.*, May 23, 1934, p. 1.

The administration bill was introduced in the Senate by Senator Pittman on May 22, and in the House by Mr. Dies on May 23.<sup>93</sup> Because of the taxing provision the bill was referred to the Ways and Means Committee which held brief hearings.<sup>94</sup> Only administration witnesses were heard by the committee. Secretary Morgenthau appeared very briefly; Mr. Oliphant, the drafter of the bill, explained its mechanics in some detail. The bill was reported favorably without any major changes on May 28,<sup>95</sup> and the House began its consideration on May 30, voted down all amendments, and sent it on its way to the Senate by a rousing vote of 263 to 77 on May 31, 1934. The opposition had come from conservative Democrats, almost all of the Republicans, and a few Democrats who were still insisting upon mandatory silver remonetization.

Hearings were not held in the Senate. There debate on the House measure began June 6 with Senator Pittman opening the discussion which proved to be bitter and extensive. Several important amendments were offered from the floor only to be beaten down by substantial margins. One by Senator Thomas of Oklahoma to require the silver to be taken into the reserves at its market value rather than its monetary value was rejected, 65 to 17. Senator Long's amendment providing for mandatory remonetization of silver at the ratio of 16 to 1 was defeated, 59 to 18. Senator Shipstead's proposal to attach the Patman bonus bill as a rider was lost, 51 to 31, and the bill was approved on June 11, by a vote of 55 to 25. The House quickly concurred in the Senate amendments on June 13, and the President affixed his signature on June 19, 1934.

The Silver Purchase Act was drafted in the Treasury and went through both houses with only minor amendments. Administrative action had been defensive and involuntary; the initiative had lain with the silver bloc in Congress. If presidential

93 S. 3658 and H. R. 9745, 73rd Cong., 2nd Sess.

94 Hearings before the House Committee on Ways and Means on H. R. 9745, 73rd Cong., 2nd Sess., May 25, 26, 1934. 200 pages.

95 H. Report 1801, 73rd Cong., 2nd Sess., May 23, 1934.

intervention had prevented this bloc from attaining its objectives in toto, it had done so at a price; that price had been *some* legislation whereas administration plans called for none. The silver bloc seemed to be the greater winner. It gave up on its wish to have the Treasury buy fifty million ounces of silver a month, but it obtained a mandatory provision pledging the Treasury to purchase an unspecified amount of silver until the ratio should become 25 to 75.

### THE BANKING ACT OF 1935

The Banking Act of 1935 has been termed by some financial observers the most important banking legislation of the Roosevelt administration. This does not seem to be the opinion of President Roosevelt himself for there is no mention of the Banking Act of 1935 in Volume IV (1935) of the *Public Papers and Addresses of Franklin D. Roosevelt*. Although the President wrote letters to Senator Fletcher and Representative Steagall accompanying the draft of a bill drawn by Governor Eccles of the Federal Reserve Board, no record of the letters or of the act itself is even listed in the index. The explanation seems to be that here as in the case of the 1933 act presidential participation was singularly incidental and unimportant. Administration concern in banking legislation in 1935 there was, but it did not stem from the President. It was Governor Eccles of the Federal Reserve Board, not President Roosevelt, who fostered the bill which was to emerge from the Senate several months later in greatly modified form.

The banking crisis of 1932-1933 gave rise to widespread discussion of our entire banking system. Dominant throughout this discussion was the proposal for a unified banking system under federal control. During the early months of 1934 the central bank idea was endorsed by Frank Vanderlip, Adolph A. Berle, Jr., John Dickinson, Senator Cutting, Senator Borah, and several others. At this time, however, the Roosevelt administration, through Secretary of the Treasury Morgenthau, Federal Reserve Board Governor Black, and the President him-

self, vehemently denied any intention of seeking such legislation. The appointment of Marriner S. Eccles to succeed Eugene R. Black as Governor of the Federal Reserve Board was hailed by the financial world as further evidence that the administration did not favor a government controlled central bank.<sup>96</sup> This impression was strengthened in mid-November when Senator Fletcher, after conferring with the President regarding banking legislation for the following session, stated that no major legislation in that field was contemplated.<sup>97</sup> Senator Fletcher confirmed this view on December 11, when he averred that banking legislation during the coming session would be "clarifying rather than drastic."<sup>98</sup> Toward the end of January, 1935, a White House conference attended by Secretary Morgenthau, Governor Eccles, and other Treasury officials was reported to have discussed banking legislation. No details were given out but it was understood that expansion of Federal Reserve Board powers was among the things discussed. It was rumored that the chief motive behind this move was to forestall congressional action toward creating a central bank of issue.<sup>99</sup>

On February 4, 1935, President Roosevelt wrote letters to Senator Fletcher and Representative Steagall, chairmen of the banking committees of the two houses, enclosing the draft of a bank bill. The bill, drawn by Governor Eccles, was exceedingly comprehensive. Title I amended the permanent deposit insurance laws; Title II, the controversial portion of the bill, modified the organization and powers of the Federal Reserve Board; Title III included technical changes non-controversial in nature. Representative Steagall introduced the bill on February 5, saying that he was pleased with it as it stood.<sup>100</sup> Senator Fletcher who introduced it in the Senate on the day following saw "an improvement over the existing situation" and "some very

<sup>96</sup> *New York Times*, November 11, 1934, p. 39.

<sup>97</sup> *Ibid.*, November 15, 1934, p. 4.

<sup>98</sup> *Ibid.*, December 11, 1934, p. 40.

<sup>99</sup> *Ibid.*, January 26, 1935, p. 31.

<sup>100</sup> *Ibid.*, February 6, 1935, p. 2. H. R. 5357, 74th Cong., 1st Sess.

good features" in the bill which he explained he had finished reading at 2 o'clock that morning.<sup>101</sup> Senator Glass let it be known that he had no part in its construction and had not been consulted when he told reporters on February 7, that he did not know what his attitude would be because he had not read it. He said he had not seen a line of the bill or been able to obtain a copy of it until it had been sent to the Capitol.<sup>102</sup>

The House Committee on Banking and Currency held hearings on the bill through February, March, and April.<sup>103</sup> Governor Eccles appeared several times. Other administration representatives appearing were: Leo T. Crowley, Director of the Federal Deposit Insurance Corporation, J. F. T. O'Connor, Comptroller of the Currency, L. E. Birdzell, General Counsel of the Federal Deposit Insurance Corporation, and T. Jefferson Coolidge, Undersecretary of the Treasury. With the exception of these persons, the witnesses appearing were almost unanimous in their opposition. The opinion of sixty leading economists who signed a statement on March 7 that enactment of the banking bill would "invite ultimate disaster in this country" typified the sentiment expressed. In a speech before the Economic Club of New York on April 11, H. Parker Willis, termed the bill "revolutionary" and declared:

I speak in cold blood and as the result of mature deliberation, when I say that this is the most disastrous, the most self-assured, the most insincere banking proposal in American history.<sup>104</sup>

At the close of hearings the committee drafted a new bill which Chairman Steagall introduced and simultaneously reported April 19, 1935.<sup>105</sup> After defeating radical efforts to

101 S. 1715, 74th Cong., 1st Sess.

102 *New York Times*, February 8, 1935, p. 8.

103 Hearings before the House Committee on Banking and Currency on H. R. 5357, 74th Cong., 1st Sess., February 21-April 8, 1935. 882 pages.

104 *Commercial and Financial Chronicle*, CXL, 2634 (April 20, 1935).

105 H. Report 742, 74th Cong., 1st Sess., April 19, 1935.



write in a "commodity dollar" provision and a proposal that the Federal Government buy the stock of the Federal Reserve banks, administration leaders likewise beat down Republican efforts to strike out the "political control" provisions. Final vote came on May 9, 1935, the bill being approved by a vote of 271 to 110.

In the Senate the story was otherwise. A subcommittee of the Banking Committee, under Carter Glass, had already been studying the measure. When the House bill arrived the entire committee conducted hearings on an elaborate scale.<sup>106</sup> Sixteen witnesses expressed their views; more than half of these were bank officers from throughout the country. Governor Eccles appeared briefly as did Crowley, Birdzell, and O'Connor, but for the most part the time was taken up by individuals unfriendly to the administration proposals, particularly to Title II. At the close of the hearings the committee held frequent executive sessions during which the bill underwent a complete rewriting. Title II came in for especial attention. When Senator Glass reported the bill fundamental changes had been made in the composition, powers, and jurisdiction of the Board, now called the Board of Governors of the Federal Reserve System.<sup>107</sup> The new Board of Governors was to consist of seven members appointed by the President; all were to serve for fourteen years, their terms of office to overlap so that two would be appointed every two years. No member was to serve more than one full term. The two *ex officio* members (Secretary of the Treasury and Comptroller of the Currency) were dropped. Not more than four were to be of the same political party and at least two must be experienced bankers. In place of the provision in the administration bill that the chairman and vice-chairman of the new Board of Governors were to be appointed

<sup>106</sup> Hearings before the Senate Committee on Banking and Currency on H. R. 7617, 74th Cong., 1st Sess., April 19-May 22, 1935. 1022 pages.

<sup>107</sup> S. Report 1007, 74th Cong., 1st Sess., July 2, 1935. See F. A. Bradford, "The Banking Act of 1935," *American Economic Review*, XXV, 661-672 (December 1935).

by the President to serve at his pleasure, the Senate bill provided that the President could designate two of the regularly appointed members to serve as chairman and vice-chairman respectively for four years of their terms. The provision in the administration bill that selections of president and vice-president by the board of directors of each Federal Reserve Bank should be subject to annual approval by the Board of Governors was modified so that such approval should come only once every five years. Other changes, similar in spirit, were such as to make the measure more acceptable to the banking and business world.<sup>108</sup>

Debate began on July 24 with Senator Glass taking up most of the time on that and the day following. He singled Governor Eccles out for an unrestrained lashing, condemning him for being unsound, inflationary, and committed to centralized control and planning as a panacea for our economic ills. Regarding the bill originally submitted he commented:

It isn't an administration bill. The President never read a word of it, unless it was very recently. The Secretary of the Treasury is on record as saying he had not read it. Every member except one (Eccles) of the Federal Reserve Board testified he had not seen the bill until after it was sent up here.<sup>109</sup>

The Senate approved the bill as it had been reported by the Banking Committee, July 26, 1935, without a roll call being taken.

The bill went to conference on July 26 only to run into a stalemate when some of the Senate conferees refused to sit with Representative Goldsborough who charged that the Glass subcommittee had been influenced by Wall Street. Mr. Goldsborough publicly retracted his statement on August 1, and the conference resumed. Not until August 16 did the conferees

<sup>108</sup> The Open Market Committee was made more representative, hence less subject to central control; security underwriting by commercial banks was liberalized, etc.

<sup>109</sup> *Congressional Record*, 74th Cong., 1st Sess., p. 11824, July 25, 1935.

come to an agreement. As usual, compromises were made on both sides but in respect of Title II, where most of the controversy had centered, Senate views won the major victory. The *New York Times* in reporting the end of the struggle observed:

The end of the conference marks a long fight over the policies of Marriner S. Eccles, Governor of the Federal Reserve Board, as expressed in the bill passed by the House, and the views of the Glass group as set forth in the Senate bill. Opinion tonight was that Mr. Glass, veteran banking legislator, had once more come out the victor.<sup>110</sup>

Both houses adopted the conference report without delay. Apparently all parties were relieved to be rid of the measure which had been before them in one form or another for more than six months. The compromise character of the final measure is well illustrated by the fact that immediately upon its passage Governor Eccles expressed himself as "very well satisfied with the outcome," only to be followed the same day by the report of the Special Committee on the Banking Act of the American Bankers Association, terming the act "an acceptable piece of legislation."<sup>111</sup>

<sup>110</sup> *New York Times*, August 17, 1935, p. 1.

<sup>111</sup> *Ibid.*, August 24, 1935, p. 19.

## CHAPTER IX

### IMMIGRATION LEGISLATION 1880-1940

FEW subjects can compare with immigration in the amount of time devoted to them by Congress. Beginning in the early 1880's and continuing through 1924 no session of Congress escaped one or more bitter debates on this topic. Three chief issues have monopolized most of the attention: exclusion of Asiatics, literacy qualifications for immigrants, and the imposition of quota restrictions. Judged in the light of public discussion, as reflected in the daily press, these three features have represented the essence of American immigration policy.

In probably no other field has there been such consistent absence of cooperation between Congress and the President. Such otherwise dissimilar Presidents as Arthur, Cleveland, Taft, and Wilson shared one common experience: all of them vetoed immigration bills. In Wilson's case only was the veto overridden. Speculation over the cause of such lack of harmony between President and Congress in this particular field is not rewarding. A possible reason lies in the borderline character of the immigration problem, embracing as it does questions both internal and international in scope. In its dealing with the issues, Congress has been more concerned with the internal aspects of national immigration policy than with their international implications or consequences.

Party politics, as such, has not been particularly important. Democratic and Republican presidents have opposed new legislation and party lines have been badly confused in both houses. Some sectional lines can be noted but they are not of major significance. The congressional delegations from the Pacific Coast have been unremitting in their support of legislation excluding Asiatics. In general, those representing highly urbanized sections of the East, where the alien groups have possessed strong and aggressive leadership, have been opposed to measures restricting further immigration. Some slight sentiment in sup-

port of a continued liberal policy of admitting aliens has come from representatives from sparsely settled sections of the South and Middle West. With the exception of the Pacific Coast none of these segments of opinion was unanimous in its position.

### CHINESE EXCLUSION LEGISLATION

The first subject to engage the attention of Congress was the demand for restriction of the immigration of Chinese.<sup>1</sup> The Burlingame Treaty of July 28, 1868, had committed the United States to a policy of free migration from one country to another. Almost immediately people on the Pacific Coast began to clamor for some restriction against the Chinese who were beginning to flock in increasing numbers to California, Oregon, and Washington. In 1876 both parties went on record favoring restrictive legislation, and what appears to have been the first congressional investigation of immigration was instigated. A joint committee went to the Pacific Coast and spent considerable time on an extensive inquiry into conditions growing out of the existing policy of unrestricted immigration. Its report recommended modification of the Burlingame Treaty so as to permit restrictive legislation.

Matters ran on until 1879 when Congress passed the Fifteen Passenger Act which limited the number of Chinese coming to the United States to fifteen per vessel. President Hayes vetoed the bill because in his opinion it violated the Burlingame Treaty. Shortly thereafter, President Hayes was authorized by a joint resolution of Congress to appoint a commission to negotiate a new treaty with China. The new treaty of 1880 recognized the right of the United States to restrict and limit but not to prohibit the immigration of Chinese laborers.

On March 9, 1882, the Senate passed a bill which provided that all Chinese immigration should be suspended for twenty years. The bill was reportedly favorably to the House and approved without amendment. President Arthur vetoed the bill

<sup>1</sup> For the early phases of American policy toward Chinese immigration, see Tien-Lu Li, *Congressional Policy of Chinese Immigration* (Nashville, Tennessee, 1916).

on April 4, 1882, stating that it violated the existing treaty with China. He pointed out that the bill was too sweeping in its restrictions and that the suspension period of twenty years was too long, but intimated that a more moderate measure might not meet the same fate. The Senate reconsidered the bill on the following day but failed to override the veto.

On April 6, 1882, Representative Horace F. Page of California introduced a bill calculated to meet the objections stated in the President's veto message. This bill<sup>2</sup> was referred to the Committee on Education and Labor which reported a substitute bill<sup>3</sup> providing for the suspension of the entrance of Chinese laborers for ten years. On April 17 the House approved the measure and on April 28 the Senate passed it 32 to 15. The House concurred in the Senate amendments, and the President signed the bill on May 9, 1882.

Complaints that the 1882 act was not accomplishing its purpose led to the passage of a somewhat stricter amendatory bill in 1884. This bill, like its predecessor, was written by the combined representatives of the Pacific Coast states. Anti-Chinese riots in 1885 led to the passage of still further legislation in 1888. As the act of 1882 was due to expire in 1892, some effort was made to obtain a more effective law. During the first session of the Fifty-second Congress twelve bills dealing with the Chinese immigrant were introduced. On April 4, 1892, the House approved a measure which excluded all Chinese.<sup>4</sup> The vote of 178 to 43 bespoke the growing concern that was developing. In the Senate, however, the counsel of moderation prevailed and the existing measure was merely extended for another ten-year period. In conference the Senate views were accepted and the new act was signed by the President on May 5, 1892.

With his customary vigor President Roosevelt took an active interest in the immigration issue. In his first annual mes-

2 H. R. 5667, 47th Cong., 1st Sess.

3 H. Report on H. R. 5804, 47th Cong., 1st Sess., April 14, 1882.

4 H. R. 6185, 52nd Cong., 1st Sess.

sage on December 3, 1901, he recommended the immediate re-enactment of the existing Chinese exclusion law, urging such amendments as were necessary to make its enforcement entirely effective. Congress further extended the law by the act of May 5, 1902.

### GENERAL IMMIGRATION LEGISLATION

The last quarter of the nineteenth century also witnessed the beginning of general legislative regulation of immigration although the more spectacular nature of the Chinese exclusion controversy tended to monopolize public attention. In June, 1882, Congress passed a bill regulating the carrying of immigrants by sea vessels.<sup>5</sup> President Arthur vetoed the measure for technical defects but stated that he favored the object of the bill.<sup>6</sup> The bill was subsequently passed as H. R. 6722, after the necessary changes had been made, and received the President's approval. During the same session both houses approved by large majorities the first general regulatory immigration bill.<sup>7</sup> As finally approved, the bill excluded only convicts (those convicted for political offenses being excepted), although the House had previously passed by a vote of 110 to 16 a more rigorous bill barring paupers, convicts, insane, etc.<sup>8</sup> President Arthur signed the bill on August 3, 1882.

During the first session of the Fiftieth Congress the House of Representatives created a select Committee on Investigation of Foreign Immigration. This committee, known as the Ford committee, held sessions in New York City, Boston, Pittsburgh, and Detroit. It did not investigate Chinese immigration. At the conclusion of its hearings it drafted a bill (H. R. 12291) which it reported out on January 19, 1889.<sup>9</sup> It recommended

<sup>5</sup> H. R. 2744, 47th Cong., 1st Sess.

<sup>6</sup> Roy L. Garis, *Immigration Restriction* (New York, The Macmillan Company, 1927).

<sup>7</sup> H. R. 6677, 47th Cong., 1st Sess.

<sup>8</sup> H. R. 6596, 47th Cong., 1st Sess.

<sup>9</sup> H. Report 3792, 50th Cong., 2nd Sess., January 19, 1889.

that the system of immigration administration through contracts between the Secretary of Treasury and the state governments (provided for in the act of 1882) be discontinued in favor of direct federal administration. This bill failed to pass as did a dozen other immigration bills introduced during the session.

In recognition of the growing importance of immigration, Congress moved to meet the need. On December 12, 1889, at the beginning of the Fifty-first Congress, the Senate created a standing Committee on Immigration. On December 20, 1889, the House established a select Committee on Immigration and Naturalization; this committee was later also given the status of a permanent standing committee. On March 12, 1890, by concurrent resolution Congress authorized the respective committees of each house to conduct a joint investigation of immigration. Hearings ran from March 13 to July 18, 1890. More than 150 witnesses from all sections of the country and all strata and groups were questioned by the committee. Most important among the official witnesses was Secretary of the Treasury Windom who recommended that the administration of all immigration laws be taken over by the United States. This was precisely the recommendation that the Ford committee had made two years earlier.

The joint committee made an elaborate report of its findings and reported a bill (H. R. 13175) which served as the basis for discussion in both houses.<sup>10</sup> A new bill (H. R. 13586) was reported a month later as a result of suggestions emerging during the recent debates.<sup>11</sup> This bill eventually became the act of March 3, 1891; it was the most comprehensive law up to that time.

Many persons were convinced that measures must be taken to restrict the growing stream of people entering the country. In the search for an effective means of accomplishing this objective without running head on into the numerous groups op-

10 H. Report 3472, 51st Cong., 2nd Sess., January 14, 1891.

11 H. Report 3807, 51st Cong., 2nd Sess., February 14, 1891.



posed to the principle of restricted immigration the literacy test seemed to have the greatest possibilities. The struggle for the enactment of a literacy qualification law was bitter and protracted.<sup>12</sup> Some of the leading incidents may be sketched briefly. During the hearings conducted by the joint committee in 1890,<sup>13</sup> the question of the literacy test was considered; the committee made no recommendations, however, and the matter was not discussed at any length during consideration of the bill. Senator H. C. Lodge advocated the literacy test in an article in the *North American Review* for January, 1891. In 1894 the Immigration Restriction League was formed in Boston. The League worked out a bill incorporating the educational test and had it introduced by Senator Lodge in December, 1895.<sup>14</sup> The Senate committee reported the bill to the Senate on February 18 and recommended its passage as amended.<sup>15</sup> Subsequently, on May 21, 1896, by a vote of 195 to 26, the House passed a bill which carried a literacy test requirement.<sup>16</sup> The Senate passed the same bill on December 17, 1896, by a vote of 52 to 10, but President Cleveland vetoed it two days before he completed his term of office, March 2, 1897. The bill was repassed over the President's veto in the House, the vote being 193 to 37, but the Senate could not muster the necessary two-thirds and the bill died. President Cleveland disapproved the bill because it was a departure from the traditional American policy and out of harmony with the spirit of our institutions.

In his first message to Congress President Roosevelt endorsed the literacy test. In the House a bill omitting a literacy test provision was introduced by Representative W. B. Shat-

12 H. P. Fairchild, "The Literacy Test and Its Making", *Quarterly Journal of Economics*, XXXI, 447-460 (May, 1917).

13 See H. Report 3472, 51st Cong., 2nd Sess.

14 S. 2147, 57th Cong., 1st Sess.

15 S. Report 290, 54th Cong., 1st Sess., February 18, 1896.

16 H. R. 7864, 54th Cong., 1st Sess.

tuc.<sup>17</sup> The bill was defended by Mr. Shattuc on the grounds of expediency but the House was in no mood to compromise and a literacy amendment by Representative Underwood of Alabama was adopted by an overwhelming vote over the protest of Shattuc. The House passed the bill as amended on May 27, 1902, without a record vote. During the debate in the House frequent mention was made of the Republican platform of 1896 and of the President's endorsement of literacy qualifications.

When the Senate Committee on Immigration received the bill it held brief hearings,<sup>18</sup> and reported it favorably on June 27, 1902, endorsing the literacy clause,<sup>18</sup> but other business prevented discussion of the matter until the following session.

The Senate did not get around to the immigration bill again until February 27, 1903. At that time Senator Fairbanks stated that the committee had instructed him to move to strike out Section 3 (the literacy clause) because there was some opposition and only a few days of the session remained. The amendment was agreed to without debate; shortly afterwards the Senate adopted the bill without record vote on February 28. The Senate agreed to the conference report without debate, March 2, 1903, the literacy clause being omitted. The House agreed to the report also without debate on March 3, the vote being 194 to 11 and the President signed the bill the same day.

On February 14, 1906, Senator Dillingham of Vermont introduced a new immigration bill which was referred to the Committee on Immigration, and reported favorably on March 29.<sup>20</sup> Senator Dillingham explained that the purpose of the new bill was to tighten existing restrictions rather than create new ones. No literacy test was included in the bill but the Sen-

17 H. R. 12199, 57th Cong., 1st Sess.

18 These hearings are summarized in the 178 page report made by the Senate committee. See note 19.

19 S. Report 2119, 57th Cong., 1st Sess., June 27, 1902.

20 S. Report 2186, 59th Cong., 1st Sess., March 29, 1906.

ate added such an amendment from the floor and passed the bill without record vote on May 23, 1906. The House Committee on Immigration and Naturalization reported the bill with an amendment in the nature of a substitute which also carried a literacy provision.<sup>21</sup> Debate on the literacy test was bitter. After considerable parliamentary maneuvering the House voted 128 to 116 to strike out the literacy clause and substitute a provision which created a commission to study the entire immigration problem and report to the President and Congress.

The conference committee reported a compromise measure which retained the clause creating an investigating commission in place of the literacy test. After some obstruction the Senate agreed to the conference report on February 16, 1907, without record vote. Two days later the House also approved the report, the vote being 193 to 101. President Roosevelt signed the bill February 20, 1907. Once more the literacy test had been lost in the shuffle.

President Roosevelt, the only president within the past thirty years who had expressed positive approval of a literacy qualification, had been unsuccessful in achieving his wish in spite of the fact that two major immigration laws had been passed during his term of office.

The nine-man commission provided for in the 1907 act was established immediately. For the next four years, under the direction of Professors J. W. Jenks of Cornell and W. J. Lauck of Washington and Lee, the commission conducted an extensive investigation and its findings were published in forty-two volumes. The commission voted 8 to 1 in favor of restricting immigration to this country and agreed that the literacy test was the most practicable way of accomplishing this. The lone dissenter, Representative William S. Bennett of New York, had from the beginning been an outspoken opponent of all restrictive legislation.

President Taft took no public notice of the report of the Commission of Immigration, but Congress moved immediately to put its recommendations into effect. Senator Dillingham, who had been chairman of the commission, introduced a bill which incorporated most of its recommendations on August 5, 1911.<sup>22</sup> The bill was reported by Senator Lodge from the Committee on Immigration on January 18, 1912. In the long discussion immediately preceding final passage of the bill sentiment was overwhelmingly in favor of the literacy test. Several senators drew attention to the activity of steamship companies in stimulating immigration to this country through numerous agents scattered throughout Europe. On April 19, 1912, the Senate voted 56 to 9 to retain the provision requiring ability to read and write twenty-five words from the Constitution as a test of eligibility to enter the United States. Later the same day the bill passed without a roll call.

The House Committee on Immigration and Naturalization reported the bill favorably with an amendment providing for a reading test only, on June 7, 1912.<sup>23</sup> The Rules Committee refused to grant a special order during that session, and the bill had to lie over for more than six months, but on December 19, 1912, the bill was approved 179 to 52.<sup>24</sup> After some six weeks of delay both houses approved without record votes a conference report providing a literacy test involving reading only.<sup>25</sup>

President Taft delayed until the last possible moment before committing himself on the bill. On February 6, he held a public hearing, stating at the beginning of the proceedings: "The burden is upon those who oppose the bill. It requires a very strong showing to induce the Executive to override the

<sup>22</sup> S. 3175, 62nd Cong., 1st Sess.

<sup>23</sup> H. Report 851, 62nd Cong., 2nd Sess., June 12, 1912.

<sup>24</sup> At this time the House was controlled by Democrats.

<sup>25</sup> H. Report 1410, 62nd Cong., 3rd Sess., January 30, 1913. The two previous reports were H. Report 1340 and H. Report 1378, also 62nd Cong., 3rd Sess.

action of both houses of Congress.”<sup>26</sup> Some two hundred people attended the hearing, most of them representatives from the National Liberal Immigration League. This organization, which numbered among its members such well-known figures as Charles W. Eliot, President Emeritus of Harvard, Harry Judson Pratt, President of the University of Chicago, and Andrew Carnegie, put on a strong drive against the bill.<sup>27</sup> It circulated thousands of printed copies of Cleveland’s veto message of March 2, 1897, and great volumes of other literature. Apparently this campaign was effective with the President for on February 14, 1913, he returned the bill to Congress with a brief veto message.

After two or three hours of debate the Senate voted 72 to 18 to override the veto on February 18. Representative Burnett, leader of the struggle for the bill in the House, had predicted that the President’s veto would be overridden within twenty minutes after the bill reached the House.<sup>28</sup> Either this was a case of whistling in the dark or something went awry for on February 19, after one hour of debate the vote was 213 to 114, five votes short of the necessary two-thirds majority.

#### IMMIGRATION LEGISLATION FROM 1914 TO 1917

Mr. Burnett introduced his bill again on June 13, 1913. It was reported favorably on December 15, withdrawn and reported again the following day.<sup>29</sup> After extensive debate, the

<sup>26</sup> *Philadelphia Ledger*, February 7, 1913.

<sup>27</sup> The list of impressive names on the roster of the league was somewhat misleading for the guiding spirit and financial support of the organization was shrouded in mystery. It was alleged sometime later, when the league again became active in the struggle over the bill during Wilson’s administration, that the real backers were the steamship companies which stood to gain so much if the bill was defeated. This charge was made by the American Federation of Labor and it presented impressive evidence to substantiate its case.

<sup>28</sup> *New York Sun*, February 17, 1913.

<sup>29</sup> H. Report 140, 63rd Cong., 2nd Sess., December 15, 1913, and H. Report 149, 63rd Cong., 2nd Sess., December 16, 1913.

House passed it by a vote of 253 to 126 on February 4, 1914. Before the House completed its action President Wilson let it be known that he was opposed to the literacy test provision. The *New York Evening Post* for February 4, carried a story stating that "Mr. Wilson's mind is no longer 'to let' on the matter, as he phrased it last week."<sup>30</sup> It continued that he had not indicated that he would veto the bill, however, nor had he tried to have the "hateful" provision stricken out in the House, but added, "he is depending upon some action in the Senate looking to the striking out of the restriction test." The article concluded that perhaps the best move would be to put the bill over until the next year.

If President Wilson had hoped thus to destroy the literacy clause he was doomed to disappointment for the Senate Committee on Immigration reported the bill favorably on March 19, 1914.<sup>31</sup> Almost nine months elapsed before the Senate took the bill up on December 9, 1914. It was debated on twelve separate days and passed on January 2, 1915, by a vote of 50 to 7. The conference report appeared on January 12, was debated briefly and agreed to without roll call by the Senate on January 14. After very brief debate the House approved it, 227 to 94, on January 15, 1915.

President Wilson had taken pains to let it be known that he was opposed to the literacy test, but he would not state definitely whether he would veto such a bill. That, he said, was a bridge he would cross when he came to it. The period immediately following the affirmative action of Congress was one of excessive activity among the friends and foes of the bill. On the one hand President Wilson was entreated to veto it by such persons as Dr. John H. Finley, Dr. Charles W. Eliot, Andrew Carnegie, Jane Addams, Louis Marshall, and Dr. Harry Pratt Judson. The *New York Times* charged that the bill was the work of the American Federation of Labor and called upon the

<sup>30</sup> *New York Evening Post*, February 4, 1914, p. 1.

<sup>31</sup> Report 355, 63rd Cong., 2nd Sess., March 19, 1914.

President to strike it down.<sup>32</sup> But not all the arguments came from one side. Prescott F. Hall, Secretary of the Executive Committee of the Immigration Restriction League, in a letter to the Editor of the *Times*, took issue with the editorial. He stated that the Farmers' Union, the Farmers' National Congress, and the Cotton Growers' Association were all supporting the bill, and added that the legislatures of twelve states, as well as thirty college presidents, and seventy-seven per cent of those in *Who's Who* were also among its endorers.<sup>33</sup>

President Wilson announced that he would hold a public hearing for those who wished to speak on the bill. The chief groups defending the bill were the American Federation of Labor, the New Jersey Federation of Patriotic Societies, the Daughters of Liberty, the Farmers' National Congress, and the Farmers' Union. Conspicuous among the opposition were representatives from Tammany Hall, the Italian League, the Hebrew League, and the Young Men's Hebrew Association. Many other groups held mass meetings and demonstrations denouncing the literacy test. The New York Assembly, largely at the instance of the New York City delegation led by Alfred E. Smith, passed a resolution requesting the President to veto the measure. In general the large eastern urban centers were most vociferous in their antagonism.

President Wilson vetoed the bill on January 28, 1915, and gave two reasons for his disapproval:

It seeks to all but close entirely the gates of asylum which have always been open to those who could find nowhere else the right and opportunity of constitutional agitation for what they conceived to be the natural and inalienable rights of men; and it excludes those to whom the opportunities of elementary education have been denied, without regard to their character, their purposes, or their natural capacity.<sup>34</sup>

<sup>32</sup> *New York Times*, January 19, 1915, p. 8.

<sup>33</sup> *New York Times*, January 22, 1915, p. 10. See also J. W. Jenks and W. J. Lauck, *The Immigration Problem*, 6th edition revised and enlarged by R. D. Smith (New York, Funk and Wagnalls, 1926), pp. 423-448.

<sup>34</sup> *Congressional Record*, 63rd Cong., 2nd Sess., pp. 2481-2482, January 28, 1915.

Regarding the literacy clause he said:

If the people of this country have made up their minds to limit the number of immigrants by arbitrary tests, and so reverse the policy of all the generations of Americans that have gone before them, it is their right to do so. I am their servant and have no license to stand in their way. But I do not believe they have.

I respectfully submit that no one can quote their mandate to that effect. Has any political party ever avowed a policy of restriction in this fundamental matter, gone to the country on it, and been commissioned to control its legislation? . . . Let the platforms of parties speak out upon this policy and the people pronounce their wish. The matter is too fundamental to be settled otherwise.

The veto message concluded:

I have no pride of opinion in this question. I am not foolish enough to profess to know the wishes and ideals of America better than the body of her chosen representatives know them. I only want instructions direct from those whose fortunes, with ours and all men's are involved.

When the House reconsidered the bill on February 4, 1915, the poll of 261 to 136 lacked eleven votes of being enough to override the vote.

On January 29, 1916, Representative Burnett once more introduced his immigration control bill bearing the literacy clause. It was reported on January 31, 1916,<sup>35</sup> considered under a special rule on March 24, 1916, debated for five days, and passed on March 30, 1916, by a vote of 307 to 87. The steadily increasing majority by which the House approved the measure made it seem apparent that it was just a matter of time until it would become law no matter what the attitude of the President might be.<sup>36</sup>

<sup>35</sup> H. Report 95, 64th Cong., 1st Sess., January 29, 1916.

<sup>36</sup> Analysis of this vote reveals that the representatives from 26 southern and western states cast no adverse votes; 18 state delegations divided; and in 4 states only, Connecticut, Michigan, New York and Rhode Island, were a majority of the representatives recorded against the bill.



Chairman E. D. Smith of the Senate Committee on Immigration reported the bill favorably April 12, 1916.<sup>37</sup> Months went by with no action until July 27, when Senator Borah offered the immigration bill as an amendment to the child labor bill (H. R. 8234) because he felt that it was not being pushed by the chairman in charge. On July 29 Senator Poindexter also complained that the immigration issue was languishing from neglect, and on July 31 he attempted unsuccessfully to get it before the Senate. President Wilson invoked party discipline to shelve the bill. At a party caucus late in July the Democratic Senators voted 38 to 0 to postpone action on the immigration bill until the next session. They also voted 32 to 7 to reject the immigration bill as a rider to the child labor bill. This was made official on July 31, 1916, when the Senate with all Democrats voting together voted 35 to 17 to postpone the immigration bill until the next session.<sup>38</sup>

Undoubtedly the imminence of a general election provided the President with the leverage necessary to persuade his party not to press the immigration bill to an immediate decision. Borah, Poindexter and other Republicans, mostly from the far West, could well afford to urge haste but the Democrats realized that the continuation of the administration in office could easily be jeopardized if the immigration bill were pushed and as a consequence some of the large doubtful eastern states—with heavy foreign populations—were alienated. The Democratic strongholds in the South had little to fear—as far as their own seats in Congress were concerned. Fear of losing the presidency was the deciding factor and the immigration bill was shelved until after the election. It was not an issue in the 1916 campaign except in scattered local instances.

When the second session of the Sixty-fourth Congress convened the Senate proceeded almost immediately to debate the bill. The focus of interest had shifted, however, and the Senate devoted its attention almost entirely to the Japanese exclus-

<sup>37</sup> S. Report 352, 64th Cong., 1st Sess., April 12, 1916.

<sup>38</sup> *New York Sun*, August 1, 1916.

ion question. In the four days that it spent on the bill very little was said about the literacy clause. The vote on final passage on December 14, 1916, was 64 to 7. The conference report,<sup>39</sup> containing no modification of the literacy clause, was approved by both houses without record votes on January 13 and January 16, 1917.

A campaign even more bitter than that two years' earlier was now waged. President Wilson refused to grant a public hearing, but the press of the country, especially that of the urban East, printed a steady barrage most of which was unfriendly. An editorial in the *New York Times* charged that Congress was taking orders from the American Federation of Labor in passing the "Labor Exclusion bill." Terming the Federation "that unofficial but potent fourth branch of the Federal Government," it insisted that the education test was only a blind to limit the labor supply and thus retard the progress of the United States.<sup>40</sup>

The veto message of January 29, 1917, was quite brief. The President listed two reasons for his disapproval: the literacy test, and the provision authorizing the immigration officer or the Secretary of Labor to waive the literacy requirement in cases where the laws of the country concerned were deemed to discriminate against the person involved. He called this an "invidious function for any administrative officer of this Government." After forty minutes' debate the House voted to override the veto 287 to 106 on February 1, 1917. The Senate took up the bill on February 5, and after considerable discussion passed it by a 62 to 19 vote.

## IMMIGRATION LEGISLATION 1921-1924

### IMMIGRATION ACT OF 1921

From the passage of the act of 1917 until the act of 1924 the immigration committees of Congress were deeply submerged in two problems: formulation of a systematic and com-

<sup>39</sup> H. Report 1291, 64th Cong., 2nd Sess., January 13, 1917.

<sup>40</sup> *New York Times*, January 20, 1917, p. 10.

prehensive formula of restrictive legislation, and attainment of a workable solution of the problem of Orientals. It was foreseen that one of the chief after-effects of the World War would be a greatly increased tide of emigration, and unless barriers were set up this country would be flooded. Moreover, most of this new flood would originate in those sections of Europe that had come to be regarded as less desirable. It was to meet this problem that the immigration committees labored for more than five years.

As a war measure, Congress had passed the act of May 22, 1918, establishing a passport control over all persons whether citizens or aliens. By its terms this act was to expire December 31, 1919, and unless some action were taken immediately there would be no defense against the throngs said to be clamoring for entry. Pending enactment of permanent machinery Congress extended the operation of this act, restricting its application to aliens only. This bill followed substantially the recommendations of the Secretary of State and was endorsed by a message from the President on August 25, 1919. It became a law without the President's approval on November 13, 1919.

With this measure as a stop-gap both committees turned their attention to the task of working out something more permanent. The House committee had already held hearings during the summer of 1919 during which the Reverend Sidney L. Gulick, Executive Secretary of the Executive Committee for Constructive Immigration Legislation, occupied more than half of the time.<sup>41</sup> This committee had one thousand members, many of whom were persons of prominence. They seemed to be more or less window dressing, however, for it was brought out in the hearings that very few of them took any active part, and many were not even acquainted with the work that the committee was doing. The Federal Council of Churches was also vaguely in the offing but here again the connection was tenuous and uncertain. Apparently the money came largely

<sup>41</sup> Hearings of the House Committee on Immigration and Naturalization, 66th Cong., 1st Sess., June 12-20, and September 25, 1919, 296 pages.

from Andrew Carnegie but even on this information was sketchy. Dr. Gulick's plan called for elimination of existing provisions which discriminated against oriental races and substitution of a percentage plan which would be applied to all races. The chief witness against Dr. Gulick's plan was Senator James D. Phelan of California who made it clear that the State of California, with Washington and Oregon in the background, were the prime forces against any loosening of the barriers to the Japanese.

Extensive hearings were also held throughout the summer of 1920, much of the testimony being taken in California.<sup>42</sup> Albert Johnson, chairman of the committee, reported H. R. 14461 on December 6, 1920.<sup>43</sup> It provided for a two-year suspension of all immigration. Mr. Johnson explained the necessity for strong measures by showing that the existing system of passport control was keeping out less than 1 per cent of those applying for entry. The House debated the bill four days and approved it by a vote of 296 to 42 on December 13, 1920. The Senate Committee on Immigration held hearings on the Johnson bill from January 3 to January 26, 1921.<sup>44</sup>

On February 15, 1921, Senator Dillingham reported H. R. 14461 with a committee amendment which substituted a 3 per cent limitation plan.<sup>45</sup> According to the committee report, the percentage plan had first been suggested by the Immigration Commission in 1910. At the time H. R. 14461 came along the Senate committee had before it such a bill (S. 4627). This was the bill which the committee recommended to the Senate now as an amendment in the nature of a substitute for H. R. 14461. After one day of discussion the Senate passed the sub-

<sup>42</sup> Hearings before the House Committee on Immigration and Naturalization, 66th Cong., 2nd Sess., July 12-29, 1920. 1483 pp.

<sup>43</sup> H. Report 1109, 66th Cong., 3rd Sess., December 6, 1920.

<sup>44</sup> Hearings before the Senate Committee on Immigration on H. R. 14461, 66th Cong., 3rd Sess., January 3-26, 1921. 713 pp.

<sup>45</sup> S. Report 789, 66th Cong., 3rd Sess., February 14 (calendar day 15), 1921.

stitute, 61 to 2, on February 19, 1921. In conference the House conferees agreed to the Senate bill which provided that for fifteen months immigration from any country should be limited to 3 per cent of the number from that country who were in the United States at the 1910 census. The House agreed to the conference report <sup>46</sup> by a vote of 296 to 40 on February 26, 1921. Senate approval came the same day without a roll call. A pocket veto by President Wilson as he left office prevented the bill from becoming law.

President Wilson's failure to act did not solve the problem. Consequently Representative Johnson introduced a new bill on April 21, 1921. The House passed the bill without a roll call on February 22, 1921. The Senate committee reported the bill favorably,<sup>47</sup> and approved it on May 3, 1921, 78 to 1. Minor changes were compromised in conference and the bill became law when signed by President Harding on May 21, 1921. From beginning to end this act was a congressional measure.

#### THE IMMIGRATION ACT OF 1924

The first quota act of 1921, a temporary measure, was extended two years on May 11, 1922, when Congress found that it was impossible to work out the details of a comprehensive law in the time allotted. The House Committee on Immigration and Naturalization held extensive hearings during the Sixty-sixth and Sixty-seventh Congresses, and reported its conclusions to the House on February 15, 1923.<sup>48</sup> It recommended a bill which retained the quota principle but reduced the percentage from three to two and pushed the base year back to 1890. No action being taken on this bill, it was reintroduced by Mr. Johnson as H. R. 101 the following session, and the Committee on Immigration and Naturalization again held extensive hearings.<sup>49</sup> From December, 1923, through April,

46 H. Report 1351, 66th Cong., 3rd Sess., February 22, 1921.

47 S. Report 17, 67th Cong., 1st Sess., April 30, 1921.

48 H. Report, 67th Cong., 4th Sess., February 15, 1923.

49 Hearings before the House Committee on Immigration and Naturalization, 68th Cong., 1st Sess., December 26, 1923-April 17, 1924. 1437 pp.

1924, the committee was in almost continuous session. During this period there was very close cooperation between the committee and the Departments of State and Labor. Many of the technical experts as well as several of the political officials discussed different features of the bill. Their testimony on problems of administration was particularly welcomed by the committee members. James J. Davis, Secretary of Labor, submitted to Mr. Johnson, chairman of the House Committee on Immigration and Naturalization, a draft bill providing for a quota system but omitting both the percentage and the year of reference. In a letter accompanying the bill Secretary Davis stressed that the bill's intent was not to suggest policy but to provide a practicable plan for administration. Particularly helpful were the provisions for overseas inspection as the most humane and effective method of excluding those who were unable to meet the qualifications for entrance. This principle of examination at the source was one of the most valuable features of the 1924 law although it received almost no publicity. Both President Harding in his message of December, 1922, and President Coolidge in his message of December, 1923, had urged the adoption of such a plan.

In addition to the witnesses already mentioned the House committee commissioned Dr. Harry H. Laughlin, of the Eugenics Record Office of the Carnegie Institute of Washington, to make a study of the entire immigration problem from the standpoint of eugenics. Dr. Laughlin devoted six months to the intensive investigation in Europe and this country, submitting his findings in a comprehensive report with accompanying charts and tables on November 21, 1922.<sup>50</sup> This report was not favorable to the so-called newer immigration; its influence on the committee was potent and many of its recommendations were incorporated in the 1924 act notwithstanding the sharp condemnation heaped upon it by many eminent scholars.

As a result of the committee work, Mr. Johnson introduced H. R. 6540 February 1, 1924, and reported it out on February

<sup>50</sup> *Ibid.*, pp. 1343-1437.

9.<sup>51</sup> Before any action was taken he introduced a second bill (H. R. 7995) on March 17. This was reported out on March 24,<sup>52</sup> it became the basis of the 1924 act, many of its provisions remaining unchanged during the ensuing struggle. The chief difference between H. R. 6540 and H. R. 7995 was the addition in the latter of a section barring aliens ineligible to citizenship, inserted upon the insistence of representatives from the Pacific Coast. The House passed the Johnson bill April 12, 1924, by a vote of 323 to 71, retaining the exclusion clause in spite of protests from Secretary of State Hughes.

The Senate, meantime, had been considering a bill of its own (S. 2576) which had been introduced by Reed of Pennsylvania on February 20, 1924, and reported March 27. Upon Secretary of State Hughes' plea there was some sentiment in favor of softening the exclusion provision by excepting from it "an alien entitled to enter the United States under the provisions of a treaty or agreement relating solely to immigration." This would have permitted the Gentlemen's Agreement with Japan to continue in force. A letter from the Japanese Ambassador to the Secretary of State was introduced on April 14. The letter stated that a law such as the bill which passed the House might have "grave consequences." It so irritated the senators that they approved a provision in their own bill excluding aliens ineligible to citizenship by a vote of 71 to 4. Whereas the House bill had provided that the act would go into effect on July 1, 1924, the Senate bill stipulated immediate effectiveness.

The Senate bill as approved contained another important provision: the national origins plan. Under this principle our entire existing population is classified according to country of origin or ancestry. Total immigrants admitted in a single year are then prorated among the several countries on the basis of this ratio. The purpose of the new plan was to restrict further the number of "newer" immigrants granted entry. This provision had been offered as an amendment in the House on

51 H. Report 176, 68th Cong., 1st Sess., February 9, 1924.

52 H. Report 350, 68th Cong., 1st Sess., March 24, 1924.

April 11, by Representative Rogers of Massachusetts but had been rejected after some little discussion on April 12, 1924. The same provision was introduced as an amendment to the Senate bill by Senator Reed of Pennsylvania on April 14, 1924; it was agreed to, after some minor changes, the same day, and remained when the Senate substituted S. 2576 for H. R. 7995 in the form of an amendment and passed, 62 to 6, on April 18, 1924, thus sending both bills to conference.

President Coolidge tried unsuccessfully to persuade the conference committee to postpone the effective date of the exclusion provision until March 1, 1925, with the stipulation that it should not apply "to nationals of those countries with which the United States, after the enactment of this act, shall have entered into treaties by and with the advice and consent of the Senate for the restriction of immigration."<sup>53</sup> Finally on May 7, the President invited the Republican conferees to the White House and did succeed in getting the effective date for this clause extended to March 1, 1925. The conference report<sup>54</sup> with this provision was considered in the House on March 9, 1924. Chairman Johnson defended this extension of time in the interest of promoting international amity, but for once the chairman of the committee found himself in the minority. Representative J. E. Raker of California, in a rather effective speech, told how he had worked on this bill for fifteen years; how it had passed the House with virtually no change from the committee report; how the conference committee had arrived at complete agreement on May 6; how the press had been called and informed of the conferees' work; how the majority members of the committee had been called to the White House the morning of May 7; and how the President had dictated the clause in controversy. Mr. Raker concluded:

The point is that after we had agreed upon the conference report, after the labor that many of us had given to that bill, we are compelled on our honor as Members of the House,

<sup>53</sup> Garis, *op. cit.*, p. 332.

<sup>54</sup> H. Report 688, 68th Cong., 1st Sess., May 9, 1924.



elected by the people, to refuse and decline to sign a report that had been our labor for years, because a foreign government desired to so dictate to us what should be done about domestic legislation.<sup>55</sup>

This appeal had its desired effect for the House voted, 191 to 171, on May 9, 1924, to recommit the conference report with instructions not to agree to the postponement of the exclusion clause until March 1, 1925. A new conference report placing the effective date at July 1, 1924, was accepted by both houses on May 15, 1924, by votes of 308 to 62 and 69 to 9. President Coolidge signed the bill, May 26, 1924, with the following statement :

In signing this bill, which in its main features I heartily approve, I regret the impossibility of severing from it the exclusion provision which, in the light of existing law, affects especially the Japanese... If the exclusion provision stood alone I should disapprove it without hesitation, if sought in this way at this time... I must therefore consider the bill as a whole, and the imperative need of the country for legislation of this general character. For this reason the bill is approved.<sup>56</sup>

The Act of 1924, in many respects the most important of all immigration acts, was primarily legislative in origin. While many of its administrative features, including the exceedingly important overseas inspection section, did receive much of their inspiration from the executive departments, two of the most fundamental innovations in American immigration policy were exclusively congressional in origin. The new national origins principle which remains today the chief formula for admitting aliens is the first of these. The second is the clause abrogating the Gentlemen's Agreement with Japan, after seventeen years adherence to this policy.

<sup>55</sup> *Congressional Record*, 68th Cong., 1st Sess., p. 8232, May 9, 1924.

<sup>56</sup> Hearings before the House Committee on Immigration and Naturalization, 68th Cong., 1st Sess., Appendix, pp. 1409-1410.

With the act of 1924 American immigration policy as it exists today was pretty well determined. The last twenty years have witnessed few changes in the law and these have been of only minor importance, although numerous attacks have been made upon the alleged injustices of the national origins principle. Interestingly the New Deal era though it had struck an all time high in the quantity and importance of legislation passed had added virtually nothing to our immigration laws. Looking backwards, the chief milestones in national immigration policy since the Civil War have been the following: Chinese exclusion, selective immigration through the exclusion of certain classes of defectives, utilization of literacy qualifications as a means of enforcing a restrictive policy of immigration, adoption of the quota system, adoption of inspection at source, exclusion of Japanese, and adoption of national origins principle as the basis for admitting aliens. Of all these features, that of inspection at the source seems to have been the only one to originate primarily with the executive departments.

## CHAPTER X

### CONSERVATION OF NATURAL RESOURCES

CONSERVATION has frequently been used as a convenient cloak for the passage of legislation which in reality was intended to accomplish just the opposite objective. Various groups intent on promoting their own selfish interests have often sought and all too often succeeded in obtaining legislation under the guise of protecting the country's natural resources when in reality the measure in question was but a skillfully concealed vehicle for furthering their own program of exploitation. This practice has resulted in some rather paradoxical situations where the chief supporters of a particular piece of conservation legislation have been groups whose interests were quite antithetical to each other. One cannot review the legislative history of the major conservation acts passed during the past forty years without becoming acutely conscious of this odd juxtaposition.

For many years there have been large numbers of persons unselfishly interested in preserving and restoring the natural resources of this country. No motive other than a sincere desire to guarantee to the future some of the bounties of the past has prompted their labors. These persons, who might be termed pure conservationists, included bird-lovers, naturalists, outdoor enthusiasts, and wild life protectors. In this group, also, were such figures as Theodore Roosevelt, Gifford Pinchot, William S. Greely, and others who were concerned with the longer range economic implications of conservation. Because of their sincere and abiding interest in any conservation program these nature lovers were frequently the innocent victims of groups whose motives would not withstand careful scrutiny.

Many if not most of the so-called conservation measures discussed in Congress during the past three decades have been sponsored by groups whose sole aim was that of underwriting

the successful continuance of profitable exploitation. Skillfully masking their activities behind the convenient disguise of conservation, they have been able not only to escape the opposition of the genuine conservationist—they have frequently succeeded in enlisting his enthusiastic support. Sometimes it has been the railroads or the timber companies; in other instances it has been the stock-owners or the arms and munitions manufacturers. Whatever the identity of the selfish interest this resort to camouflage has been a not uncommon practice and it has done untold damage to the advancement of conservation.

This confusion of motives is not, of course, peculiar to conservation legislation. Something of the sort is present in almost every bill that appears in Congress, but it is questionable whether it reaches such an advanced stage as that which seems to be the common characteristic in this particular field. The task of tracing the origin of bills is complicated by this factor. Inasmuch as the final act rarely bears great resemblance to the original draft, the origin of the many amendments that have combined to change not only the details but frequently the very principle of the bill must be studied with great precision. In a very real sense the completed conservation measure is usually the work of "many minds." Accordingly, the responsibility of assessing credit—or blame—requires a delicacy of measurement not afforded by the relatively clumsy instruments employed in these researches. It is believed, however, that the approximations here presented are substantially accurate and complete.

For the purpose of this study conservation legislation has been broken down into four groups: reclamation of arid lands, forest preservation, migratory bird protection, and public land reserves. Although this does not cover every major piece of legislation it does include every field in which more than one such important law was passed. The few individual statutes omitted from this list would not, it appears, reveal legislative backgrounds substantially different from those herein discussed.

## RECLAMATION OF ARID LANDS

## LEGISLATION PRECEDING THE NEWLANDS ACT OF 1902

National legislation on the reclamation and irrigation of the arid lands of the United States, prior to the important Newlands Act which still fixes the basic reclamation policy of the national government, was confined to the Desert Land Act of 1877 and the Carey Act of 1894.<sup>1</sup> The first of these was not, strictly speaking, a reclamation act at all. It merely permitted the sale of "desert lands" in lots not exceeding one section at the price of \$1.25 an acre to those who undertook to put water on it. The act led to much abuse; the extremely lenient definition of "desert lands" led to the sale of thousands of acres of the richest lands and the purpose of the act was almost defeated. Moreover, the idea behind this act though well-meaning was so impracticable as to defy success. The financial burden involved in the irrigation of these arid lands was so great that private capital dared not undertake the venture. Some type of government help had to be provided if the hopes of the irrigation enthusiasts were to be realized. The Carey Act of 1894 was the first step in this direction.

## THE CAREY ACT OF 1894

Early in the 1880's Major J. S. Powell, Director of the Geological Survey, became convinced that federal responsibility for reclamation of the arid lands of the west offered the only practicable solution. But there were complicating factors. The irrigation committees of both houses were dominated by men from the arid regions of the West, men who were anxious to have all public lands ceded to the states. This point of view was reflected in the House committee report of March 9, 1892, which recommended that the Federal Government grant to the states all public lands except mineral lands,

1 J. T. Ganoe, "The Origin of a National Reclamation Policy", *Mississippi Valley Historical Review*, XVIII, 34-52 (June, 1916). This article is the most informative single source discovered dealing with the background of the Newlands Act. It has been heavily drawn upon in the account here presented.

forest reserves, parks, and reservations.<sup>2</sup> This would have resulted in the transfer from federal to state ownership of more than half a billion acres.

In 1891 when the first Irrigation Congress met in Salt Lake City the question of federal versus state control was one of the chief subjects of discussion, but there was such marked divergence of opinion that the congress adjourned without taking a strong stand one way or another. In 1894 Senator Carey of Wyoming, representing the view of the far western states, succeeded in attaching a reclamation amendment to an appropriation bill. The Carey Act, as this amendment was called, provided that the Federal Government should donate to various western states a certain quantity of land with the understanding that these states would provide for the irrigation, settlement, and cultivation of this land. Although this legislation was hailed as a most important step toward a comprehensive reclamation program, its fruits were disappointing. Ten years after its passage only a single state, Wyoming, had begun to take advantage of its provisions and this on an extremely small scale. The next step was the direct federal participation that came in with the Newlands Act.

#### THE NEWLANDS ACT OF 1902

The Newlands Reclamation Act of June 17, 1902, remains today, forty years later, the basic plank of national reclamation policy. This act has always been associated with President Theodore Roosevelt. Because of his sincere interest in conservation and his tireless efforts to awaken the country to its importance, the impression has become more or less general that his voice was the only one raised in behalf of conservation and that all results accomplished were due entirely to him. Roosevelt himself contributed to this bit of folklore. He was proud of his record in the conservation of our national resources. In his appraisal of his presidential record, he put the Newlands Act among his most outstanding achievements. His role was

2 H. Report 569, 52nd Cong., 1st Sess., March 9, 1892.

vital. His enthusiastic support of numerous important conservation bills supplied the vital spark essential to their final passage. He and those other able advocates of conservation whom he gathered around him, fostered an atmosphere in which conservation sentiment attained sufficient stamina to endure severe blights and still survive. Yet Roosevelt was ably supported by several congressmen who had been preaching and practicing conservation long before his succession to the presidency. The events preceding the passage of the Newlands Act give an interesting case study of a law which had been long in the incubation stage before the vigorous aid of Roosevelt imparted to it that vitality necessary for its fruition. The names of the National Irrigation Association and of George H. Maxwell are prominently associated with every important development in reclamation activity during this period.<sup>3</sup>

In 1897 George H. Maxwell began his activities in behalf of a nationally financed program of arid land reclamation. As executive chairman of the National Irrigation Association which he founded in 1899, he was the spearhead and chief motivating force. Throughout the next five years he never ceased in his effort to get the kind of national legislation he desired. In his campaign he employed all of the tricks of the modern lobbyist. At one time or another he established several magazines to aid him in preaching the gospel of reclamation. Among them were the *National Advocate*, the *California Advocate*, the *Homemaker*, *Opportunity*, and *Maxwell's Talisman*. He also maintained a press bureau which sent out literature to newspapers all over the United States. His chief objective was to get the national government to enter into a grand program of national reclamation and he left few stones unturned in his efforts to enlist support from every possible source. He successfully solicited the financial aid of several transcontinental railroads by convincing them that his program would have untold advantages for them. Throughout his activities he shrewdly capitalized upon the impressive title of the National Irrigation

<sup>3</sup> Ganoe, *op. cit.*

Association which was composed mainly of land owners and farmers who were interested in a nationally financed reclamation program. At the same time groups enjoying little publicity but motivated by less selfish reasons were interested in the future of the arid lands. Among these were many small irrigation farmers, congressmen and members of the Geological Survey who believed in the necessity of government aid but wished to make the land itself bear at least a part of the financial burden. These groups worked quietly, having neither the desire nor the resources to carry on a high pressure campaign such as that of Maxwell and the National Irrigation Association. There is little doubt, however, that the flamboyant tactics of Maxwell played an important part in the final marshaling of support behind the Newlands bill.

Maxwell argued that until the eastern manufacturers and trade unions became converted to the idea of reclamation it would receive no serious attention from Congress. To enlist such support was the task he set for himself. As the first step toward making the nation reclamation-conscious he was instrumental in getting the ninth annual meeting of the Irrigation Congress scheduled for Chicago. At this meeting, which was heavily attended, reclamation was noisily and enthusiastically promoted. Maxwell and Representative Francis G. Newlands of Nevada figured especially prominently in the discussions. On November 30, 1900, Newlands called upon F. H. Newell of the Geological Survey to draft reclamation legislation for the state of Nevada. Before they had finished their deliberations they decided to broaden the bill to include all arid lands of the country. This bill, the first of a long line of bills that were to be considered and refined before the final act of 1902, was never introduced into Congress.<sup>4</sup>

Newlands continued his work, calling several meetings at his home for the purpose of obtaining the views of the members of Congress from the other western states. On January 17,

<sup>4</sup> Hearings before the House Committee on Irrigation, 1909, pp. 64-68, cited in Ganoe, *op. cit.*



1901, he gave a dinner to the Public Lands Committee of the House at which the outlines of a bill were discussed. On January 25, 1901, Newlands, Newell, and Maxwell drew up a bill setting aside the proceeds from the sale of public lands for irrigation purposes. This bill was introduced the following day by Newlands.<sup>5</sup> The Newlands Act of 1902 followed the fundamental principles set forth in this bill. It will be noted that these principles were agreed upon by a group made up of a government administrator, a professional lobbyist, and a member of Congress. This was almost a year before Theodore Roosevelt made his first official pronouncement on the subject.

The summer of 1901 brought a severe drought to the Middle West. This did the reclamation movement no harm. Plans were projected for a more vigorous struggle in behalf of the Newlands bill. It was just at this point that Theodore Roosevelt became President. Within a week of the date he took office, President Roosevelt had a long conference with Pinchot and Newell on the general subject of conservation. At his request a memorandum was prepared for his use in framing his message to Congress the coming December.<sup>6</sup> Conservation had a conspicuous place in this message.

At a meeting of western congressmen on December 3, 1901, a committee under the chairmanship of Senator Warren of Wyoming was directed to draw up a bill for immediate introduction. This bill followed carefully the outlines of the Newlands bill of the previous session. It provided for financing by the sale of public lands rather than through direct appropriations as Maxwell and his associates had desired. This bill was introduced by Senator Hansbrough on January 21, 1902, as S. 3057, 57th Congress, 1st Session. With little opposition it was passed without a record vote on March 1.

President Roosevelt conferred with members of the House Committee on Irrigation and some minor changes were made in the bill before it was reported back to the House on April

<sup>5</sup> H. R. 13846, 56th Cong., 2nd Sess.

<sup>6</sup> S. Report 2308, 56th Cong., 2nd Sess., February 14, 1901.

7, 1902.<sup>7</sup> The measure was passed by the House on June 13, 1902, by a vote of 146 to 55. The Senate concurred in the House amendments without delay on the following day and the President signed the bill three days later. Although the bill as finally passed did not meet with the unqualified approval of Maxwell, who had hoped for a more out-and-out federal bounty there seems little doubt that the ease with which it passed through both houses was in large measure due to the skillful job of missionary work he had done with the manufacturers and industrialists of the East.

### FOREST PRESERVATION

#### THE LEGISLATION PRECEDING THE WEEKS ACT OF 1911

Forest conservation legislation is chiefly represented by the Weeks Act of 1911 and the Clarke-McNary Act of 1924, but two previous acts must be mentioned in order to reveal the full sweep of the conservation movement as it affected Congress.

Forest conservation sentiment began to attract attention in this country in the decade following the Civil War. During the 1870's several magazines began to print articles on the need for legislation to protect the nation's forest resources. *Popular Science*, *The Nation*, and *The North American Review* were among the leaders in the movement. Many newspapers also participated in the publicity campaign and several books made their appearance within the next dozen years. Carl Schurz, Secretary of the Interior under President Hayes, sought unsuccessfully in 1878 and 1880 to obtain legislation withdrawing all or part of the timber lands from sale.<sup>8</sup>

In 1888 Representative Holman of Indiana introduced a bill for the general revision of the land laws.<sup>9</sup> This bill contained

<sup>7</sup> H. Report 1468, 57th Cong., 1st Sess., April 7, 1902. See also the statement of Representative Newlands in the House, *Congressional Record*, 57th Cong., 1st Sess., p. 6674, June 12, 1902.

<sup>8</sup> S. 609, 45th Cong., 2nd Sess., and S. 760, 47th Cong., 1st Sess.

<sup>9</sup> H. R. 7901, 59th Cong., 1st Sess.

a provision creating a system of forest reserves. It passed the House with almost no discussion of the forest reserves section only to die for want of action in the Senate. Revision of the land laws was a live issue, however, and in 1891 Congress passed a General Revision Act.<sup>10</sup> While this bill was in conference a section authorizing the President to establish forest reserves was inserted at the request of Secretary of the Interior Noble who followed the lead of B. E. Fernow, Chief of the Forestry Division. Thus one of the most important pieces of forest legislation ever to be passed in this country was accomplished chiefly through the combination of a vigilant administrative official, a friendly conference committee (the members of the conference committee without exception came from non-western states), and the inattention of Congress. Dr. John Ise, an outstanding authority on American forest problems, says of this piece of legislation, "This provision, definitely providing for national ownership of forest lands, a complete departure from the forest policy hitherto pursued, is by far the most important piece of timber legislation ever enacted in this country."<sup>11</sup>

As one of the closing acts of his administration President Cleveland, acting on a recommendation of a commission created by the American Forestry Association and the National Academy of Science, set aside some twenty-one million acres of timber lands in thirteen new reserves. Cleveland's action brought forth from Congress a flood of criticism and resulted in the passage of the Act of 1897. This act was sponsored by Senator Pettigrew but it represented the work of several members of both houses, and included substantially the provisions of the pending McRae bill which embodied the recommendations of the American Forestry Association. This act reduced

10 H. R. 7254, 51st Cong., 1st Sess.

11 John Ise, *The United States Forest Policy* (New Haven, Yale University Press, 1920), p. 109. This book contains a most informative account of the struggle for forest conservation legislation. It has been the chief source drawn upon in this account.

the widespread hostility precipitated by the President's action by postponing its effective date until March 1, 1898, but more important, it laid the foundations for establishment within the Department of the Interior of a protective and administrative organization for forest preserves.<sup>12</sup> It constitutes, therefore, an important segment of the conservation policy of the country. Though originally suggested by Charles D. Walcott of the Geological Survey, its final form was chiefly the work of Congress.

#### THE WEEKS ACT OF 1911

Theodore Roosevelt's interest in conservation has already been mentioned. Throughout his administration he was admirably aided and advised by Gifford Pinchot who had become Chief of the Division of Forestry in 1892. Pinchot, perhaps, more than any other person deserves the title of First Conservationist in the history of the country. His crusading spirit and unquenchable enthusiasm were admirably supplemented by a comprehensive grasp and technical competence in the field of forestry unequalled by anyone else in America. Roosevelt and Pinchot enjoyed a harmonious association, Pinchot supplying the expert counsel essential to give focus to the boundless energy with which Roosevelt approached the conservation problem. Appointment of a Public Lands Commission with Pinchot as chairman in 1903 was followed by the creation of the Inland Waterways Commission in 1907 and the Governors' Conference in 1908. Finally, in 1909, shortly before he relinquished his office to Taft, President Roosevelt received the report of the National Conservation Commission, an agency growing out of the Governors' Conference.<sup>13</sup> All of these

<sup>12</sup> Darrell H. Smith, *The Forest Service* (Washington, D. C., The Brookings Institution, 1930), pp. 20-22; see also B. E. Fernow, *Economics of Forestry* (New York, Thomas Y. Crowell and Company, 1902), pp. 404-411.

<sup>13</sup> Although the objectives of the Governors' Conference were several, conservation seems to have received most emphasis from President Roosevelt. In harmony with sentiment expressed during this conference, Roosevelt created the National Conservation Commission headed by Gifford Pinchot. It made its report, three volumes totaling more than 2000 pages, to the

agencies and conferences contributed materially to the conservation movement by the amassing of information and the focusing of public attention. During his administration Roosevelt showed his good faith by adding more than 100 million acres to the forest reserves of the nation. Nevertheless, no important forest legislation was enacted while he was President.

As early as 1902 the Senate had acted favorably on a bill providing for the purchase of not more than two million acres in the Southern Appalachian Mountains for the establishment of forest reserves.<sup>14</sup> This was the first of a long series of bills culminating in the next important step forward—the Weeks Act of 1911. Similar bills appeared in each succeeding Congress. In 1906 Senator Brandegee of Connecticut introduced such a bill and it passed the Senate without comment.<sup>15</sup> The following Congress a bill authorizing the creation of national forest reserves in the Southern Appalachian and White Mountains was again passed by the Senate.<sup>16</sup> When it reached the House, the Committee on Agriculture amended it by striking out all after the enacting clause and substituting the Weeks bill, broadening the scope of the proposed measure to apply to the entire country. The House passed the Weeks bill by a vote of 157 to 147, March 2, 1909.

When the bill was returned to the Senate in its newly expanded form it ran into a bitter attack from a group of far western Senators. A filibuster led by Senator Teller of Colorado and joined in by Senators Clark of Montana, Carter of Wyoming, and Heyburn and Borah of Idaho prevented the appointment of conferees. After continuous obstruction, the bill was finally committed to the Senate Committee on Forest Reservations and the Protection of Game on March 3, 1909, as the session ended.

President and he forwarded it to Congress with a special message on January 22, 1909.

14 S. 5228, 57th Cong., 1st Sess.

15 S. 4953, 59th Cong., 1st Sess.

16 S. 4825, 60th Cong., 1st Sess.

Mr. Weeks reintroduced his measure on July 23, 1909.<sup>17</sup> It provided that the Federal Government might acquire lands located at the headwaters of navigable streams and appropriated two million dollars annually for a period of five years. It also provided for a federal grant of \$200,000 a year to states for fire protection cooperation with the Department of Agriculture. On the final vote the bill received the narrow margin of 130 to 111. The Senate passed the bill without amendment, 57 to 9, on February 15, 1911.

#### THE CLARKE-MCNARY ACT OF 1924

Like the Weeks Act, the Clarke-McNary Act of 1924 was merely the culmination of a slowly maturing effort that had its beginnings as far back as 1919, when the so-called Capper resolution and the Capper bill were introduced.<sup>18</sup> The Capper bill and others introduced in subsequent sessions sought to impose federal control over cutting on private lands through use of its taxing power. Just at this time the Supreme Court's invalidation of the Second Child Labor Act<sup>19</sup> greatly weakened the support behind this line of reasoning and attention was again focused upon the federal aid principle which had been employed in the Weeks Act.<sup>20</sup>

On December 22, 1920, Mr. Snell of New York introduced a bill expanding the federal aid program for forest preservation.<sup>21</sup> In addition to substantially increasing the annual appropriations for this cooperative work the bill also enlarged the program of federal acquisition of cut-over land within the

<sup>17</sup> H. R. 11798, 61st Cong., 1st Sess.

<sup>18</sup> S. Resolution 311, 66th Cong., 2nd Sess.; S. 4424, 66th Cong., 2nd Sess. The resolution requested the Secretary of Agriculture to report not later than June 1, 1920, upon timber depletion, the condition of the forests and the alleged concentration of timber ownership.

<sup>19</sup> *Bailey v. Drexel Furniture Company*, 259 U. S. 20 (1922).

<sup>20</sup> Jenks Cameron, *The Development of Governmental Forest Control in the United States* (Baltimore, The Johns Hopkins Press, 1928), pp. 402-430.

<sup>21</sup> H. R. 15327, 66th Cong., 3rd Sess.

watersheds of navigable streams. A new feature that aroused instant opposition was a provision giving the Federal Government direct control of private cutting in the forests affected. This bill, which was the direct ancestor of the Clarke-McNary Act, was the product of a committee representing many organizations. This committee was entirely unofficial. Representatives of the leading timber and paper interests joined with organizations representing commercial groups and discussed the possibility of a common program of forest conservation. In these conversations the participation of the Forest Service was welcomed. It is interesting if not significant that this stage of proceedings was carried through without the participation of any members of Congress. This is quite in contrast with the gestative period of the reclamation bills.

Hearings were held on the Snell bill but it was never reported out of committee. Mr. Snell introduced the bill again the following session on April 11, 1921.<sup>22</sup> Hearings were again held on the bill in January, 1922, but chiefly due to the hostility toward the section giving the Federal Government supervisory control over private cutting of timber the session again ended with no action being taken. On February 6 and 7, 1923, Representative Clarke of New York introduced two bills which were replicas of the Snell bill except for the deletion of the section imposing federal control over private cutting.<sup>23</sup> Notwithstanding a letter of endorsement from President Harding no action was forthcoming but almost simultaneously the Senate adopted a resolution introduced by Senator Harrison of Mississippi authorizing a committee to investigate the forest problem on a nationwide scale and report its findings to the Senate with recommendations for legislation.<sup>24</sup> Accordingly a Special Select Committee on Reforestation was appointed with Senator

<sup>22</sup> H. R. 129, 67th Cong., 1st Sess.

<sup>23</sup> H. R. 14225 and H. R. 14241, 67th Cong., 1st Sess.

<sup>24</sup> S. Resolution 398, 67th Cong., 4th Sess.

McNary of Oregon as chairman. The committee held extensive hearings in sixteen different states from March to November, 1923. Senator McNary introduced a bill embracing the recommendations of his committee on December 15, 1923, and reported it out with the comprehensive findings of his committee on January 10, 1924.<sup>25</sup> At the request of Senator Norris the bill was then referred to the Committee on Agriculture inasmuch as it had never been considered by one of the standing legislative committees of the Senate.

In the meantime Mr. Clarke had introduced his own forest reserves bill on January 7, 1924.<sup>26</sup> The House Committee on Agriculture held brief hearings in March<sup>27</sup> and reported it favorably on April 3, 1924.<sup>28</sup> The bill was considered under Calendar Wednesday on April 16, only a half-hour being devoted to it. The following Wednesday the House debated it for several hours and, after offering numerous amendments a few of which were accepted, passed it without roll call. The Senate took up the McNary Bill on June 6, 1924, and at the request of Senator McNary substituted the Clarke bill for it. In his description of the origin and gradual perfection of the measure before them, Senator McNary stated that it was "the product of slow evolution in legislation." After the briefest of discussions the Senate approved the Clarke bill without amendment or a roll call. In neither house had there been any opposition.

### CONSERVATION OF WILD LIFE

Wild life conservation legislation in the United States is represented in this study by three laws: The Migratory Bird Law of 1913, the Migratory Bird Treaty Act of 1918, and the Migratory Bird Refuge Act of 1929.

<sup>25</sup> S. Report 28, 68th Cong., 1st Sess., January 10, 1924.

<sup>26</sup> H. R. 4830, 68th Cong., 1st Sess.

<sup>27</sup> Hearings before the House Committee on Agriculture on H. R. 4830, 68th Cong., 1st Sess., March 25, 26, 27, 1924. 90 pages.

<sup>28</sup> H. Report 439, 68th Cong., 1st Sess., April 3, 1924.



## THE MIGRATORY BIRD ACT OF 1913

The Migratory Bird Act of March 4, 1913, broke new ground by placing migratory birds under the jurisdiction of the United States Secretary of Agriculture, thus invoking federal authority for the direct protection of a segment of our wildlife resources that was rapidly becoming destroyed under chaotic conditions of state regulation. Federal intervention in this field marked a sharp break with the past. The 1913 statute was not a flash in the pan produced by a sudden burst of inspiration from an awakened Congress. It was the outgrowth of a long series of bills seeking to enlist the resources of the Federal Government in support of a program whose importance penetrated the consciousness of only a fraction of the membership of Congress. A brief factual enumeration of the several successive bills leading up to the act itself illustrates this better than any description of the nature of the legislative process.

As early as 1900 the studies of the Biological Survey bore irrefutable proof that the wildlife resources of the United States had been so greatly reduced that in the absence of some orderly program of conservation many species were doomed to immediate extinction. The first bill relating to wildfowl was introduced by Representative George Shiras, III, on December 5, 1904.<sup>29</sup> This bill, inspired by some of the conservationists in the Department of Agriculture, provided that jurisdiction over migratory birds should be transferred to that department and that hunters could carry on their activities only under regulations issued by the Secretary of Agriculture. The bill was referred to the Committee on Agriculture and although it was not acted upon it excited much discussion both within and without Congress. A somewhat similar bill except that its application was restricted to the area of the Potomac River was introduced the following Congress by Representative Rixey of Virginia.<sup>30</sup> It was not acted upon and a similar fate awaited

29 H. R. 15601, 58th Cong., 1st Sess.

30 H. R. 15849, 59th Cong., 1st Sess.

the first Weeks bill of 1908.<sup>31</sup> Mr. Weeks reintroduced his bill the following year with no better success.<sup>32</sup> Other bills of similar import fared no better.<sup>33</sup> With characteristic persistence, Mr. Weeks again introduced a migratory bird bill in 1911,<sup>34</sup> as the third session of the Sixty-first Congress was getting underway, only to see it die when Congress adjourned without taking any action. With the beginning of the Sixty-second Congress three bills and a joint resolution indicated that the importance of migratory bird legislation was beginning to penetrate minds hitherto quite impervious.<sup>35</sup> For the first time, the House Committee on Agriculture held hearings on the Weeks bill and eventually reported it out favorably on May 9, 1912.<sup>36</sup> In spite of considerable adverse sentiment engendered by the rather widely held belief that such legislation lay beyond the scope of federal power without a constitutional amendment, the bill appeared to have the approval of more than a majority in the House.<sup>37</sup> In the meantime the Senate Committee on Forest Reservations and the Protection of Game reported favorably on the bill sponsored by Senator McLean.<sup>38</sup> Neither house got to these bills during that session but early in the third session Senator McLean called up his bill. After a discussion participated in only by the author of the bill it was passed by unanimous consent without amendment on January 22, 1913.

The House Committee on Agriculture reported the McLean bill favorably on January 31, 1913, and indicated that it was

31 H. R. 22888, 60th Cong., 2nd Sess.

32 H. R. 10276, 61st Cong., 1st Sess.

33 H. R. 18585, 61st Cong., 2nd Sess.

34 H. R. 30572, 61st Cong., 3rd Sess.

35 H. R. 36 (Weeks), H. R. 4428 (Anthony), S. 2367 (McLean), S. J. Resolution 39 (Root), 62nd Cong., 2nd Sess.

36 H. Report 680, 62nd Cong., 2nd Sess., May 9, 1912.

37 The purpose of S. J. Resolution 39 had been to propose a constitutional amendment to give Congress power to protect migratory birds.

38 S. Report 675, 62nd Cong., 2nd Sess., April 26, 1912. (S. 6497 was the revised form of S. 2367 mentioned above.)

not essentially different from the Weeks bill which had been favorably reported the year before.<sup>39</sup> There appeared little likelihood that the bill would ever be reached in the short session. The House leadership, particularly Representative Mondell, was not friendly to the measure and without special help it could not obtain the right of way necessary to get it off the calendar at this stage of the session. Just as hope had all but vanished the bill was saved by the shrewd strategy of Senator McLean. On February 27, 1913, during Senate debate of the agriculture appropriation bill, he offered his migratory bird bill as an amendment and it was agreed to with only a few words of comment. When the bill was returned to the House on February 28, Representative Mondell remonstrated vigorously but to no avail. Representative Weeks made a defense so able and so impressive that virtually all opposition to the bill dissolved. When Mr. Mondell sought to kill the proposal by introducing a resolution instructing the conferees not to accept the migratory bird amendment it was defeated by the one-sided vote of 36 to 117. Thus, the first migratory bird act became law.

The initial impulse behind the act of 1913 seems to have originated in the Bureau of Biological Survey within the Department of Agriculture. Governmental administrators rather than either policy-forming department heads or the Chief Executive himself were the first to draw congressional attention to the acute need for protective legislation. Neither Taft or Wilson shared the active personal concern which Theodore Roosevelt had in conservation. To them the issues involved were important but impersonal and incapable of exciting their imagination. One senses this in the exceedingly brief, almost superficial, allusions to the subject occasionally found in their messages and speeches. Wilson's Secretary of Agriculture, David F. Houston, seems to have had no special interest in this aspect of his department. From his own account, it is apparent

<sup>39</sup> H. Report 1424, 62nd Cong., 3rd Sess., January 31, 1913.

that the broader affairs of state policy absorbed the major portion of his interest.<sup>40</sup>

So far as can be determined, key congressmen—even Representative Weeks and Senator McLean—owed their first concern with wildlife problems to their contacts with the non-political experts within the administration. Moreover, particularly in the early stages of the campaign for legislation, the experts exercised the preponderant influence in determining the nature of the bill, including the technical details of regulation. As the legislation matured, however, and as the congressional committees became more familiar with the ramifying problems of conservation, the share of congressional influence correspondingly increased. Even so, perhaps the most vital contribution made by congressmen to the bill's eventual success was the persistence with which they urged it upon the attention of the entire body until it had become a familiar and therefore no longer fearful idea.

It will be noted that the actual amount of discussion devoted to the bill itself in either house between 1904 and 1913 was relatively insignificant. Even during the period immediately preceding its final passage nothing approaching a general debate was accorded it by its sponsors or its opponents. This omission is misleading, however. The fact is that the project of federal regulation of migratory birds was a matter quite generally discussed in the press and public forum throughout this period. The pages of the *Congressional Record* reveal frequent references pro and con even though no bill was debated during the same period. The gentle yet determined manner in which its guardian angels kept the idea of a federal regulatory bill before the congressional consciousness until it began to assume the character of a familiar friend was the chief reason for its quiet acceptance in the end.

<sup>40</sup> See David F. Houston, *Eight Years With Wilson's Cabinet* (Garden City, New York, Doubleday, Page and Company, 1926). In neither the biographies of Taft and Wilson nor their messages and public addresses is conservation accorded more than incidental reference.

## THE MIGRATORY BIRD TREATY ACT OF 1918

Through the discussion over the Migratory Bird Act of 1913 many able persons had expressed honest doubt that the Federal Government had power to regulate migratory birds under the Constitution. Senator Elihu Root had sought to forestall this possibility by urging the President to negotiate a treaty with other governments of the North American continent guaranteeing the mutual protection of these birds.<sup>41</sup> Senator McLean and others also recognized the wisdom of such a step and lent their support. When the act of 1913 was immediately challenged in the courts Root and others renewed their efforts to obtain a treaty. Accordingly such a treaty with Great Britain as the other signatory was ratified by the Senate in 1916. This treaty was not self-operative, however, and until the Congress enacted enabling legislation putting its provisions into effect it remained dormant. The struggle to obtain this enabling legislation dragged along for almost two years offering a preview in miniature of the protracted campaign that was to precede the act of 1929.

Three persons bore the brunt of the work necessary to get the Migratory Bird Treaty Act safely through Congress.<sup>42</sup> The first of these, Senator McLean of Connecticut, was the only one who was a member of Congress, and he was handicapped by being a Republican in a Senate dominated by the other party. This eventuality did not hamper his effectiveness but it did force him at times to pursue a more indirect course than would otherwise have been necessary. His name did not appear upon the bill that finally became the law but in everything except name the bill was largely his handiwork. In the closing moments of the Senate debate Senator McLean alone fought down and defeated unfriendly amendments that would have greatly

<sup>41</sup> S. J. Resolution 39, 62nd Cong., 1st Sess., June 28, 1911, and S. J. Resolution 428, 62nd Cong., 3rd Sess., January 14, 1913.

<sup>42</sup> *Bird Lore*, XX, 322-323 (1918). This is an editorial remarking on the passage of the act of 1918. It gives considerable detail concerning the legislative history of the act.

altered the effectiveness of the bill and the treaty. The single most important figure outside Congress was John B. Burnham, President of the American Game Protective Association. Burnham for more than a half-dozen years had been spreading the gospel of game conservation. He had been instrumental in organizing the first hearing on the subject in Washington and had continued his efforts tirelessly during the intervening years.<sup>43</sup> As will be later brought out, Burnham's motives were not exactly altruistic inasmuch as his chief sources of financial support were the various arms and ammunitions companies. The third person deserving special attention was E. W. Nelson, Chief of the Bureau of Biological Survey. An enthusiastic believer in conservation of our wildlife resources, Dr. Nelson's quiet work over a period of several years provided the movement's less expert advocates with counsel of inestimable worth. His interest spans virtually the entire period here under discussion; it is difficult to overstate the importance of his influence. The several stages leading to the final passage of the bird bill are inextricably associated with these three men. It will again be noted that the President was not a significant factor.

S. 1553 (65th Congress, 1st Session), the enabling bill putting into effect the Migratory Bird Treaty of 1916, was introduced by Senator Smith of Arizona on April 10, 1917, and referred to the Senate Committee on Foreign Relations. It was reported favorably without amendment on April 20, 1917.<sup>44</sup> Senator Smith tried several times without success to get the bill before the Senate. At last, on July 30, 1917, the Senate took it up and shortly thereafter the bill was approved without a roll call.

The House Committee on Foreign Affairs reported the Smith bill favorably on January 17, 1918.<sup>45</sup> Sentiment was generally favorable as is shown by the final vote of 236 to 49 on June 6, 1918, after a few minor amendments had been

<sup>43</sup> *Ibid.*

<sup>44</sup> S. Report 27, 65th Cong., 1st Sess., April 17, 1917.

<sup>45</sup> H. Report 243, 65th Cong., 2nd Sess., January 17, 1918

added. The conference report was agreed to in the House on June 28, 1918, and in the Senate the following day without discussion or roll call in either house.

#### THE MIGRATORY BIRD REFUGE ACT OF 1929

The act of 1929, the single most important game conservation act yet passed, became law only after weathering ten years of the most discouraging kind of opposition.

In September, 1916, Dr. E. W. Nelson, Chief of the Bureau of Biological Survey, called attention to the growing need for a federal law extending still greater protection to the rapidly vanishing migratory wildfowl.<sup>46</sup> He proposed the establishment of bird refuges for their protection and federal licensing and supervision of hunting. To this end he directed George A. Lawyer of the Biological Survey to draft a bill, copies of which were sent to several interested people among whom were John B. Burnham, A. S. Houghton, Senator McLean, and William Greely, Chief Forester of the United States. The bill was discussed and some minor changes made but its essential form was not disturbed. It provided for comprehensive federal regulation of all migratory bird hunting and imposed a federal bird-license on persons seeking to take such game. Among its other important provisions was the creation of federal bird refuges. The bill was introduced by Senator Harry S. New and Representative Daniel Anthony on May 5, 1921.<sup>47</sup> The Senate bill was considered by the Senate Committee on Public Lands and Surveys, the House bill by the Committee on Agriculture. Although both bills were reported favorably, the session ended without any action having been taken.<sup>48</sup>

In the fourth session of the Sixty-seventh Congress the New bill was again considered on December 5, 1922. In spite of bitter opposition from southern senators who concentrated their

<sup>46</sup> *Bird Lore*, XXXI, 152-159 (1929).

<sup>47</sup> S. 1452 and H. R. 5823, 67th Cong., 1st Sess.

<sup>48</sup> H. Report 999, 67th Cong., 2nd Sess., May 10, 1922.

attack upon the federal licensing feature, last minute attempts to have it stricken from the bill were unsuccessful and the bill was approved 36 to 11. But the whole thing came to naught when the House considered its own bill briefly on February 13, 1923, and with the South and West furnishing most of the hostile votes, killed the bill for the session by voting to strike out the enacting clause 154 to 135.

Defeated in the first round, the sponsors of the bill did not give up. Burnham, Lawyer, and others redrafted their measure, changed its title and modified some of the regulatory provisions but retained the highly controversial federal license clause. In this new form it was introduced by Senator Brookhart and Representative Anthony during the first session of the Sixty-eighth Congress.<sup>49</sup> The Secretary of Agriculture threw his support behind the measure and an additional potential obstacle was removed with the assurance of the Director of the Budget that the bill was not in conflict with the President's financial program.<sup>50</sup> The unfriendly forces in Congress again asserted themselves, however, and each time the bill's sponsors sought its consideration they failed. Congress adjourned and the bill again died. The sum total of material achievement after four years of struggle was not encouraging.

In the Sixty-ninth Congress bird-refuge bills were again introduced by Senator Brookhart and Representative Anthony.<sup>51</sup> Once more the bill was favorably reported in the Senate.<sup>52</sup> It was passed over during consideration of the calendar on Feb-

<sup>49</sup> S. 2913 and H. R. 745, 68th Cong., 1st Sess.

<sup>50</sup> S. Report 610, 68th Cong., 1st Sess., May 24, 1924.

<sup>51</sup> S. 2607 and H. R. 7479, 69th Cong., 1st Sess. According to Mr. Anthony's statement during the hearings before the House Committee on Agriculture the bill had been drafted by a committee of five representing the Isaak Walton League, the National Association of Audubon Societies, the National Association of Fish, Game, and Conservation Commissioners, the Western Association of Game Commissioners, and the American Game Protective Association. Hearings before the House Committee on Agriculture on H. R. 7479, 69th Cong., 1st Sess., February 15, 1926, p. 2.

<sup>52</sup> S. Report 192, 69th Cong., 1st Sess., February 17, 1926.



ruary 22, 1926. On May 13, 1926, Senator Norbeck moved its consideration and for the next two weeks it occupied the limelight in the Senate. During this debate which covered almost one hundred pages of the *Congressional Record* Senator King was virtually the sole representative of the opposition but he needed no help. He insisted that the bill was ostensibly a game preservation measure but actually its objectives were quite the opposite and that its true sponsors were manufacturers whose sole motive was increased profits. In support of his contention Senator King put much material into the *Congressional Record* to show that the bill was being pushed by firearms and ammunition firms.<sup>53</sup> He introduced several letters from Burnham to DuPont and similar figures to show that Burnham was interested in profits rather than in conservation. He brought out that the pending bill was fathered by the American Game Protective Association and that this association, of which Burnham was president, was financed by the contributions of arms and ammunition manufacturers.

Senator Norbeck sought to invoke the closure rule in order to obtain a vote. When this failed he saw that there was no chance of further progress during the present session. On June 1, 1926, he admitted the futility of consuming more time and asked that the bill be returned to the calendar.

The Anthony bill had been reported in the House early in the session.<sup>54</sup> It was not considered during the session but on April 29, 1926, Representative La Guardia extended his remarks on it. He observed that the bill was paradoxical; supposedly a bird-refuge bill, it also seemed to be placing the chief emphasis upon the establishment of public shooting grounds at these same refuges.<sup>55</sup> Amplifying upon the identity of the true sponsors of the bill Mr. LaGuardia showed that seven of the

<sup>53</sup> *Congressional Record*, 69th Cong., 1st Sess., pp. 9906-9922, May 24, 1926.

<sup>54</sup> H. Report 402, 69th Cong., 1st Sess., February 27, 1926.

<sup>55</sup> *Congressional Record*, 69th Cong., 1st Sess., p. 8476, April 29, 1926.

twelve directors of the American Game Protective Association were employees of gun and ammunition manufacturers.

Neither house acted upon the bird bills during the second session of the Sixty-ninth Congress. With the opening of the Seventieth Congress Senator Norbeck introduced the bird bill again.<sup>56</sup> Minor changes had been made but it was substantially the same bill that had been pending for six years. The single section upon which so much vituperation had already been heaped, the federal license provision, remained as a red flag to enrage those opposed. The retention of the federal license clause was necessitated, Senator Norbeck insisted, because it was the only way in which the expenditures authorized could be financed.

The debate was prolonged and bitter. Prominent among the opposition which dominated the debate were Senators King, Reed of Missouri, Dill, Blaine, Tydings and Blease. They challenged the constitutionality of the measure as a whole, arguing that it was an unwarranted invasion of states rights. Many feared the evil that would result from the creation of a federal bureaucracy to administer the proposed regulations. Others questioned the wisdom of giving any administrative officer as much power as the Secretary of Agriculture would exercise under the new law. All joined in condemning the federal license provision. To meet objections Senator Norbeck made several rather extensive changes. He reduced the jurisdiction of the federal game wardens and the rule-making power of the Secretary of Agriculture, etc., but retained the federal license. On April 17, 1928, the Senate overrode Norbeck's opposition and by a vote of 31 to 25 adopted an amendment striking out the license fee except as applied to federal sanctuaries or reserves. With this change it adopted the bill without a roll call on April 18.

Now, for the first time, it began to look as if the migratory bird-refuge bill would become law. On August 28, 1928, at a convention of game commissioners and officers of wildlife or-

<sup>56</sup> S. 1271, 70th Cong., 1st Sess., December 9, 1927.

ganizations in Seattle, Washington, the bill was endorsed in principle.<sup>57</sup> but certain amendments were suggested. Provisions virtually requiring the Federal Government to give the bird sanctuaries to the states and assume the burden of financing them were urged. On December 10, 1928, the Secretary of Agriculture approved the suggested changes in a communication to the House Committee on Agriculture.<sup>58</sup> When the Budget Director approved the direct appropriations in lieu of the previous plan for self-financing through the license fee on January 5, 1929, the last major obstacle was removed.<sup>59</sup>

The House Committee on Agriculture held brief hearings on January 21, 1929, to consider the changes now advocated.<sup>60</sup> As a result of its deliberations the committee drew up a new bill which Mr. Andresen introduced on January 23, 1929.<sup>61</sup> The following day it reported the Norbeck bill with the Andresen bill as a substitute in the form of an amendment.<sup>62</sup> As the bill now stood it was purely a conservation measure. The public shooting grounds provision, conspicuous in former bills, was no longer present. The license provision had also disappeared and in its place was a direct authorization of federal funds. Beginning with \$75,000 for the first year, the bill authorized \$200,000 for the second year, \$600,000 for the third, and \$1,000,000 annually for the next seven years. In this new form the bill enjoyed virtually unanimous approval. Several members who had been outspokenly opposed to previous bird-refuge bills now stated that the features which they had objected to had been removed and that they were glad to support the present bill. On February 9, 1929, after a brief discussion, the

<sup>57</sup> *Bird Lore*, XXXI, 152-159 (1929).

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*

<sup>60</sup> Hearings before the House Committee on Agriculture on S. 1271, 70th Cong., 2nd Sess., January 21, 1929, pp. 11-20.

<sup>61</sup> H. R. 16525, 70th Cong., 2nd Sess.

<sup>62</sup> H. Report 2265, 70th Cong., 2nd Sess., January 28, 1929.

House passed the bill 219 to 0 on a division. On February 11, 1929, the Senate concurred in the House amendments without debate or record vote with Senators King, Blaine, and Dill now expressing their approval. Throughout the long struggle the hand of President Coolidge had not been visible. He seems to have remained aloof and his influence was not significant.

The ten years required to obtain a migratory bird refuge bill may seem upon first glance to have been an unjustifiably long period when measured in terms of the bill's importance. Examined more closely, the history of this bill affords much comfort to those who believe in the essential soundness of the democratic legislative process. It can not be doubted that the bill which finally became law was vastly superior to all its predecessors. Had any of these been passed the interests of bona fide conservation would have been indeed poorly served for in truth they were less conservation than hunting bills. The much controverted federal license provision was in reality not overly important and did not deserve the attention which it received but the issue of excluding hunting on the bird refuges was vitally important. Because of the interest and the persistence of a few individuals in either house the conservation project was kept alive. Thanks to a few other figures, equally important but less appreciated at the time, the bill was not allowed to pass until the jokers had been removed. The combination produced a piece of conservation legislation that has proved of inestimable importance to the wild life resources of the country.

The contributions of the professional lobbyists and of the administrative department deserve a special word. The former did much to awaken public sentiment to the importance of conservation. Their skilled work in organizing individuals and groups and focusing their enthusiasms upon the proper place at the strategic moment did much to promote conservation sentiment both inside and outside Congress. The fact that much of the motivation behind this missionary work was not truly conservation in character is beside the point. Even though the organizer, such as Mr. Burnham, may have been

working with his tongue in his cheek he made many people conservation-conscious. This did its bit in the final push that put the Norbeck-Andresen bill over. Similarly the administrative officials who participated in the long campaign likewise made a real contribution. It can be assumed that in the great majority of cases their motives were laudable. They had co-operated with the representatives of the arms and ammunition companies not because they approved of their objectives but because half a loaf was better than none. Faced with the task of getting some kind of a measure through, the administrators were not in a position to reject a helping hand just because it was extended palm up and fingers outstretched.

Congress alone was in a position to be particular. By biding its time it was able to get the maximum gold with a minimum of dross.

## PUBLIC LAND PRESERVES

### THE LEASING ACTS OF 1910 AND 1920

Nowhere has the "development" philosophy of western congressmen, particularly senators, been more clearly illustrated than in the protracted controversy surrounding the disposition of American oil-lands. John Ise observes, "It has been the characteristic of public land legislation that the interests of exploiters of natural resources have always received sympathetic attention before the public interests have received any consideration."<sup>63</sup> He points out further that this has been true of the earlier forest legislation just as it was in the case of the oil lands in the early part of this century. It is not surprising that such should be the case. The oil companies, alert to further their own interests, appreciated the almost boundless riches open to them and spared no effort to obtain governmental sanction for their present and future operations. With this vigorously pressed special interest, the more remote general interest could not compete. Moreover, the task of identifying the gen-

<sup>63</sup> John Ise, *The United States Oil Policy* (New Haven, Yale University Press, 1926), p. 309.

eral interest and distinguishing it from the special interest of the exploiter was not simple. To the representatives from the West there was great appeal in the argument that only by development—in the hands of those willing to invest capital for immediate production—could the West reap the benefits to which its natural resources entitled it. To do otherwise than pluck the fruit now ripe for harvest would be to deny the residents of this section that which was rightly theirs and the implication was that such denial was equivalent to permanent and irreparable loss.

As with other facets of conservation Theodore Roosevelt sensed the importance of our mineral resources and took important steps to protect them. In May and December of 1906, through messages to Congress, President Roosevelt requested legislation which would permit the Federal Government to lease mineral-bearing land. He was determined that such lands should not be lost and felt that a properly administered leasing law would best assure this objective. Senator La Follette and others supported Mr. Roosevelt with great sincerity and persistence but no appreciable results were attained. Failing to obtain statutory support, Roosevelt took matters into his own hands. Through his Secretary of the Interior he withdrew from entry more than 64 million acres of valuable coal lands.<sup>64</sup> Roosevelt's action did not escape unchallenged but he stood his ground and established an important precedent upon which President Taft based a similar step in respect of equally valuable oil lands a few years later (1909).

Like Roosevelt Taft acted only because forces within Congress, particularly the Senate, blocked his repeated efforts to obtain the necessary statutory authority. Early in 1910 Representative Pickett introduced a bill intended to grant congressional approval to the action already taken by Taft.<sup>65</sup> Sentiment in the House was strongly favorable to conservation and

<sup>64</sup> *Ibid.*

<sup>65</sup> H. R. 24070, 61st Cong., 2nd Sess.

the bill which went to the Senate was a fine example of protective legislation. Almost exclusively due to the efforts of western senators the House bill was shelved in favor of a new one more in harmony with their point of view. The ultimate leasing act which became law on June 25, 1910, was a clear-cut victory for the anti-conservationists although it did not nullify the beneficial action already taken by President Taft.

Friends of conservation continued their efforts and bills were introduced in each session of Congress. In both 1914 and 1915 bills passed the House but died in the Senate.<sup>66</sup> These two bills and others introduced during this period were highly controversial because they provided for both lease and sale of federally owned oil lands. This factor complicated and confused the issue between the exploiters and the conservationists. The matter was further clouded by the sharply different points of view of Secretary of the Interior Lane and Secretary of the Navy Daniels. Lane though reputed to be a true friend of conservation was inclined to regard the aspirations of the oil operators sympathetically.<sup>67</sup> Daniels viewed with hostility further diminution of the Navy's potential fuel resources and he openly opposed Lane's proposal to sell these lands.

Other bills of which the one introduced by Senator Walsh of Montana<sup>68</sup> was the most important also failed to make headway. After the World War the controversy revived. Secretary Lane left the cabinet to accept a position in private business before the bill which was introduced by Senator Smoot in August, 1919, came before Congress.<sup>69</sup> The new bill, written by the Senate Committee on Public Lands was a departure from previous ones in that it provided only for leasing mineral lands—the previous provisions permitting sale had been elim-

<sup>66</sup> H. R. 16136, 63rd Cong., 2nd Sess.; H. R. 406, 64th Cong., 1st Sess.

<sup>67</sup> Ise, *op. cit.*, pp. 334-5. See also Franklin K. Lane, *The Letters of Franklin K. Lane* (Boston, Houghton Mifflin Company, 1922), pp. 150-151; 160-161; 338.

<sup>68</sup> S. 2812, 65th Cong., 1st Sess.

<sup>69</sup> S. 2775, 66th Cong., 1st Sess.

inated. Smoot and his western associates had no enthusiasm for the bill. Its appeal was chiefly negative: it was vastly preferable to a proposal then beginning to gain considerable popularity—namely, that the government should develop these lands itself. After prolonged debate this bill was finally approved and became the Leasing Act of 1920. Although the final bill was not as attractive as had been the measure approved by the House, the conservationists rightfully hailed it as a true victory. Congress had an important part in this victory.

#### THE TAYLOR GRAZING ACT OF 1934

More than thirty years elapsed between the first moves toward a national public grazing lands law and its final attainment.<sup>70</sup> Between 1900 and 1926, when the chain of events destined to end in the Taylor Act of 1934 got underway, eighteen such bills had been introduced in the Senate and twenty-five in the House.<sup>71</sup> In 1902 and again in 1914 the House Committee on Public Lands and Surveys held extensive hearings on the control of public grazing lands. President Roosevelt had appointed his own Commission on Public Lands in 1903; its report was submitted to Congress in February, 1905. All of this activity produced nothing. Congress as a whole was indifferent. The few sincere conservationists were more than outweighed by the "development-minded" congressmen who were well content with the free hand afforded by the absence of any legislation.<sup>72</sup>

Late in November, 1924, when President Coolidge called the Agricultural Conference of farm leaders to consult on necessary legislation, one of the subjects it considered was that of a permanent policy for the public grazing lands. On January

<sup>70</sup> S. Report 517, 69th Cong., 1st Sess., March 31, 1926, p. 3.

<sup>71</sup> *Ibid.*

<sup>72</sup> Western congressmen as a group were not sympathetic to conservation, being committed to the theory that the resources of the West should be "developed", a euphemism for exploitation. There were some important exceptions, notably Colton and French.



28, 1925, the President forwarded to Congress a preliminary conference report which recommended that the public domain should be placed under lease with a uniform policy for grazing on public lands and national forests. Prompted by this lead, the Senate on March 4, 1925, passed a resolution authorizing its Committee on Public Lands and Surveys to investigate the broad subject of public lands policy and report its recommendations.<sup>73</sup> The committee held extensive hearings throughout the summer and fall of 1925. Its recommendations were embraced in the bill introduced by Senator Stanfield of Oregon and reported on March 31, 1926.<sup>74</sup> The Senate never considered the bill.

The public lands issue was quiescent until 1929 when it was revived to remain a living and controverted subject until the Taylor Act finally became law in 1934. With the launching of the Hoover administration in 1929 came indications that his Secretary of Agriculture Arthur M. Hyde and his Secretary of the Interior Curtis L. Wilbur favored transferring the remaining portion of the public domain from federal to state control. In the eyes of many conservationists this would be a serious blow inasmuch as many states, particularly those in which large areas of the public domain were located, were dominated by interests inimical to true conservation. Outstanding among the true conservationists in Congress were Representatives Don B. Colton of Utah and Burton L. French of Idaho. Mr. Colton was to be personally identified with every bona-fide public lands bill until his retirement from Congress in 1933. The bill which he introduced in the first session of the Seventieth Congress (H. R. 7950) contained much of the substance of the Taylor Act of 1934. This bill was not reported by the House Committee on Public Lands to which it was referred. From the beginning Mr. French was a sincere and able advocate of a sound conservation policy. His record on this issue stands out in sharp contrast to that of most western congressmen including

<sup>73</sup> S. Resolution 347, 68th Cong., 2nd Sess., March 4, 1925.

<sup>74</sup> S. Report 517, 68th Cong., 1st Sess., March 31, 1926.

his more famous colleague, Senator Borah, whose own record in this matter does not bear careful scrutiny. Although French had also disappeared from the House before the Taylor bill became law, he was in a very true sense its spiritual god father. Without his untiring work between 1929 and 1933 it is doubtful if the Taylor bill would have passed in the form that it did.

In the fall of 1929, following a conference with President Hoover, Mr. French introduced a bill to establish a permanent national policy in the protection and administration of the public domain by the Federal Government.<sup>75</sup> He defended his proposal to place the administration in federal hands on the ground that the Public Domain belonged to the people as a whole and not to the individual states in which it happened to be located. Furthermore, in his opinion the Federal Government in its administration of the National Forests and the National Parks had done a much better job than had the states in similar cases, notably under the Carey Act.<sup>76</sup> He specifically objected to Secretary Wilbur's proposal to cede the surface rights of such lands to the states. In order to guard against unsatisfactory action pending the passage of his bill Mr. French introduced a resolution giving the President power to withdraw all public lands from entry until permanent legislation could be obtained.<sup>77</sup>

Neither of Mr. French's proposals was acted upon but President Hoover acknowledged the importance of the public land problem in his annual message to Congress and devoted more space to it than had any President since Theodore Roosevelt.<sup>78</sup> He spoke specifically of oil and gas resources, grazing on the public domain, and conservation. As a first step toward a sound national policy, he announced that he had appointed a Commission on Conservation of the Public Domain and recommended that Congress authorize "a moderate sum to defray

<sup>75</sup> H. R. 4187, 71st Cong., 1st Sess.

<sup>76</sup> *American Forests*, XXXV, 739 (December, 1929).

<sup>77</sup> H. J. Resolution 126, 71st Cong., 1st Sess.

<sup>78</sup> *Congressional Record*, 71st Cong., 1st Sess., p. 26, December 3, 1929.

their expenses." Congress responded by appropriating \$50,000 and the commission prosecuted its investigation. Its report, which the President made public on March 9, 1931, recommended the ceding of the surface rights of the Public Domain to the states. If the state did not wish to accept the rights thus proffered the Federal Government should designate such lands as a national grazing range to be administered similarly to the National Forest grazing lands.<sup>79</sup> The commission's recommendations met a mixed reception. One of its most prominent members, William S. Greely, Chief Forester of the United States, refused to sign the report because of his fear that state control would jeopardize the future welfare of the public domain. Numerous congressmen also took issue with the report although it found general favor among those from the leading public land states.<sup>80</sup> No action was taken until the next Congress.

A bill carrying into effect the recommendations of the commission was introduced in the first session of the Seventy-second Congress by Representative Evans of Montana.<sup>81</sup>

Other bills proposing varying dispositions of the public land problem were introduced by Representatives French, Colton, Taylor, and Senators King and Nye.<sup>82</sup> The House Committee on Public Lands held hearings on the Evans bill and, later in the summer, on the second Colton bill which was really a revision of the previous Colton and French bills.<sup>83</sup> Many prom-

<sup>79</sup> *American Forests*, XXXVII, 210-216 (April, 1931). For a defense of the administration point of view see Ray Lyman Wilbur and Arthur Mastick Hyde, *The Hoover Policies* (New York, Charles Scribner's Sons, 1937), pp. 229-233.

<sup>80</sup> *Ibid.*

<sup>81</sup> H. R. 5840, 72nd Cong., 1st Sess.

<sup>82</sup> H. R. 4541, 4542, and 11816 by Colton; H. R. 411 and 8822 by French; H. R. 7375 by Taylor; S. 17 by King; and S. 2272 by Nye. H. R. 11816 came much later in the session.

<sup>83</sup> Hearings before the House Committee on Public Lands on H. R. 5840, 72nd Cong., 1st Sess., February 13, 1932, to April 19, 1932, 284 pages. Hearings on H. R. 11816, 72nd Cong., 1st Sess., May 3 to June 2, 1932, 153 pages.

inent persons appeared in opposition to the proposal of the President's commission. Among these were Governor George H. Dern of Utah who said that the Governors of California, Idaho, Wyoming, Arizona, New Mexico, and Nevada shared his views;<sup>84</sup> Clarence L. Ireland, Attorney General of Colorado; and Arthur H. King, Register of the Colorado State Board of Land Commissioners. Also appearing against it were William Greely and Gifford Pinchot, members of the President's commission. Mr. James R. Garfield, chairman of the President's commission, appeared in support. A letter from Secretary of the Interior Wilbur expressed full approval but Secretary of Agriculture Hyde wrote that he had not yet had time to study the matter.

The Evans bill and its counterpart in the Senate, the Nye bill, were heavily cannonaded by those representing the true conservationist point of view. The House Committee on Public Lands indicated that it would not report the Evans bill out, but its chances were considered much brighter in the Senate where most of the prominent western senators of both parties looked with favor upon the prospect of a transfer to state control. Typical of this point of view was the memorial to Congress from the Idaho Wool Growers Association requesting the return of these lands to the states. This memorial was introduced by Senator Borah.<sup>85</sup>

Meanwhile, Representatives French and Colton in consultation with the Departments of Agriculture and the Interior, and such ardent conservationists as Greely and Pinchot, had perfected a bill which contained the best features of those previously sponsored by the two congressmen. This new bill was introduced by Representative Colton on May 3, 1932.<sup>86</sup> It authorized the Secretary of the Interior to establish grazing districts on the Public Domain, make rules for the use of the land, collect grazing fees, etc. Ten per cent of the fees collected were to be used for range improvements and an additional 25

<sup>84</sup> Hearings, February 13, 1932, pp. 9-37.

<sup>85</sup> *American Forests*, XXXVIII, 176 (March, 1932).

<sup>86</sup> H. R. 11816, 72nd Cong., 1st Sess.

per cent was to go for public schools and public roads in counties where the lands were located. The bill was reported by the Committee on Public Lands on June 27, 1932,<sup>87</sup> and was on the calendar when Congress adjourned on July 16, 1932.

On December 19, 1932, the bill came up on the consent calendar but was passed over without prejudice at Colton's request when opposition was expressed by Mr. LaGuardia who asserted that it should be "knocked off" the calendar. It came up again on January 16, 1933, but was objected to by LaGuardia and Blanton. Once more on February 7, 1933, it was reached on the consent calendar and was again passed over without prejudice. Later in the day Mr. Evans moved to suspend the rules and pass the Colton bill. He pointed out to the membership that this was a greatly different bill than that which had carried the recommendations of the President's commission. After forty minutes debate the bill was passed without a record vote. It was referred to the Senate Committee on Public Lands and Surveys and died as the Congress ended March 4. Final passage of the Grazing Lands Act came almost as an anti-climax. In the first session of the Seventy-third Congress Representative Taylor of Colorado introduced a bill patterned after the revised Colton bill, but the preoccupation of Congress with the emergency legislation of the extraordinary session precluded its consideration.<sup>88</sup> A second bill, slightly revised but substantially the same as H. R. 2835 was introduced by Mr. Taylor on January 5, 1934.<sup>89</sup> Referred to the House Committee on Public Lands, it was reported favorably on March 10.<sup>90</sup> Communications from the Secretaries of Agriculture and the Interior revealed that these departments favored the bill in its present form.<sup>91</sup> Administration was placed in the hands of the Secretary of the Interior who was granted rather broad discretion in matters of leasing. Proceeds from grazing fees were

<sup>87</sup> H. Report 1719, 72nd Cong., 1st Sess., June 27, 1932.

<sup>88</sup> H. R. 2835, 73rd Cong., 1st Sess.

<sup>89</sup> H. R. 6462, 73rd Cong., 2nd Sess.

<sup>90</sup> H. Report 903, 73rd Cong., 2nd Sess., March 10, 1934.

<sup>91</sup> *Ibid.*

allocated in the bill itself: 25 per cent to go to the improvement of the land itself, 25 per cent for local taxation purposes, and 50 per cent to the federal treasury.<sup>92</sup>

The House considered H. R. 6462 under a special order on April 10, 1934. After thirty pages of debate the bill was passed on April 11, 265 to 92 with two minor amendments.

The bill was reported to the Senate on May 26, 1934.<sup>93</sup> Its substance had not been changed but numerous amendments revising matters of detail had been added. The Senate debated the bill briefly on June 12, 1934, adopting most of the committee amendments and a few offered from the floor. After spending only eighteen pages of the *Congressional Record* on the bill the Senate passed it without a roll call, June 12, 1934. The conference report containing no important changes was agreed to by both houses on June 16, 1934.

Some disagreement occurred between the Departments of Agriculture and the Interior over the bill as it finally passed. Secretary Wallace felt that some of the Senate amendments had so obstructed the primary objectives of the original measure as to jeopardize its effective administration. Accordingly, he asked the President to withhold his approval. Secretary Ickes, however, felt that the act in its present form was a true conservation measure. His view was shared by the Attorney General. Mr. Roosevelt finally accepted the recommendation of the latter and signed the bill.

Many persons had a hand in the shaping of the public land law known since 1934 as the Taylor Grazing Act. During its ten-year history its destinies lay now in the control of one group, again in that of another. Congressmen, administrative officials—political and otherwise—and lobbyists of varying degrees of self-interest all joined in the task of drawing up a bill that possessed the dual virtue of accomplishing their objective and of being politically acceptable. The President was not an important factor.

<sup>92</sup> *Ibid.*

<sup>93</sup> S. Report 1182, 73rd Cong., 2nd Sess., May 26, 1934.

## CHAPTER XI

### RAILROAD REGULATION FROM 1887 TO 1940

THE year 1887 saw the Interstate Commerce Act enacted into law. Since that time many supplemental statutes have been passed but only a half dozen of these have been of major importance. The Hepburn Act of 1906, the Mann-Elkins Act of 1910, the Valuation Act of 1913, the Transportation Act of 1920, the Emergency Act of 1933, and the Transportation Act of 1940 embrace the chief changes that have taken place.<sup>1</sup> Within the confines of these few statutes are to be found most of the features that have characterized American railroad legislation: commission regulation, rate control, control over service, control over securities, control over consolidations, the recapture clause, evaluation of physical properties, and coordination of carrying services including motor and water carriers.

The Interstate Commerce Act of 1887 climaxed twenty years of congressional concern with the railroad problem. Among the issues which underwent repeated discussion were cheap transportation, rate discrimination, the long and short haul, prohibition of rate agreements, pooling and the creation of a commission for the control of railroads. Some of these points remained unsettled long after the passage of the act. In 1868 three different resolutions were introduced looking toward national regulation of railroad rates in the interest of cheap transportation. The first bill calling for a federal railroad commission was introduced in the House in 1871 by Mr. Cook of Illinois. In 1873, Mr. Hawley of Illinois, Mr. Negley of Pennsylvania, and Senator Windom of Minnesota presented bills embodying a similar principle. The first comprehensive congressional investigation of railroads culminated in the Windom

<sup>1</sup> The Motor Carrier Act of 1935 is not included for full-length study because it affects railroads only indirectly. A brief account of its legislative history is included because of its relationship to the Transportation Act of 1940.

Report of 1874.<sup>2</sup> This report presented much factual information on existing railroad rate policies. Cheap transportation was the dominant theme. To this end the committee recommended publication of fares and rates, prohibition of combination and consolidation, imposition of the long-short haul rule, prevention of stock inflation, etc. The report also expressed the view that effective competition among railroads could be maintained only by one or more federally owned or controlled railroads to establish satisfactory standards. In this same year the McCrary bill forbidding extortionate rates and creating a nine-man commission to administer its provisions passed the House by the narrow margin of 121 to 116 but failed to make any substantial progress in the Senate.<sup>3</sup>

Numerous bills affecting the railroads continued to appear. The year 1877 saw the first Reagan bill, which proposed national regulation for all interstate roads and prohibited discrimination as to rates, introduced in the House.<sup>4</sup> A new bill was reported out by the Commerce Committee in 1878 and passed by the House, only to die in the Senate committee.<sup>5</sup> Mr. Reagan, the chairman of the House Commerce Committee, introduced additional bills in 1878 and 1880 with no greater success. Hearings were held on similar legislation in 1880 and 1882 and again in 1884 by the Commerce Committee of the House and in 1883 by the Committee on Education and Labor of the Senate. In December, 1884, the House again passed a Reagan bill by 161 to 75.<sup>6</sup> Meanwhile on January 30, 1885, the Senate

<sup>2</sup> "Transportation Routes to the Seaboard," a report of the Windom Committee, S. Report 307, 43rd Cong., 1st Sess., April 24, 1874. 2 parts, 1476 pages.

<sup>3</sup> The early beginnings of federal railroad legislation is set forth in Lewis H. Haney, *A Congressional History of Railways in the United States* (Madison, Democratic Printing Company, 1910) vol. II. Much of the factual material dealing with period prior to 1887 is taken from this book.

<sup>4</sup> This bill was referred to the House Commerce Committee but was not acted upon.

<sup>5</sup> H. R. 3547, 45th Cong., 3rd Sess.

<sup>6</sup> H. R. 5461, 48th Cong., 2nd Sess.



under the leadership of Senator Cullom of Illinois passed the Cullom bill by a vote of 43 to 12.<sup>7</sup> A deadlock ensued.

On March 17, 1885, the Senate adopted a resolution appointing a select committee of five senators to investigate and report on the regulation of railways and water routes. This committee under the chairmanship of Senator Cullom held hearings at various places throughout the country from May 20 to November 18, 1885. Some two hundred persons appeared before the committee, and the total testimony took up 1456 pages. From this mass of material the committee compiled a report that was justly termed monumental.<sup>8</sup> Two hundred forty-seven pages in length, it related the method employed in gathering the information, set forth the problem confronting the committee, indicated the possible modes of regulation, the activities of state regulation, constitutional issues, and numerous other pertinent facts. It discussed separately the several specific phases of regulation, and explained its recommendations for each. This document, popularly known as the "Cullom Report," undoubtedly had an important influence on the legislation which was finally enacted. A little more than a month after the report the Senate Commerce Committee reported out S. 1532, providing for regulation of railroads by a commission, which passed the Senate by a vote of 47 to 4.

When the bill was referred to the House, however, the influence of the Reagan philosophy led to the substitution of the Reagan for the Cullom bill, and to its approval by a vote of 192 to 41. There were significant differences between the two bills. The Reagan bill provided for administration by the Department of Justice and the courts, while the Cullom bill established a new regulatory commission. The Senate bill did not forbid pooling; the House bill did. The long and short haul clause was much stronger and more rigid in the House bill than in the Senate. The House bill did not provide for the regulation of

<sup>7</sup> S. 2112, 48th Cong., 2nd Sess.

<sup>8</sup> S. Report 46, 49th Cong., 1st Sess., January 18, 1886.

water or passenger traffic while the Senate version did. History seemed about to repeat itself as each house refused to yield. Just at this juncture, however, the Supreme Court handed down its decision in the *Wabash* case.<sup>9</sup> Reversing its previous trend, the Court declared that regulation of interstate commerce lay beyond the power of the states. It was now imperative that federal legislation be passed immediately. The conference committee settled down to produce a workable compromise but did not report until the following session.<sup>10</sup> Except for the provision prohibiting pooling, where the Senate accepted the House provision, the major features of the act followed the Cullom rather than the Reagan bill.

President Cleveland's contribution to the passage of the Interstate Commerce Act of 1887 was confined to the act of attaching his signature to the completed work. So far as can be determined, he took no part in any stage of the formulative process.<sup>10a</sup> In none of his messages to Congress did he mention railroad legislation, although the subject was actively before Congress throughout his first administration. He recommended legislation on many subjects, yet for some reason railroads were ignored. Consequently, the beginning of railroad legislation, as well as the single most comprehensive act ever passed, traces its origin directly to the legislative branch of our government.

### THE ELKINS ACT OF 1903

Scarcely had the Interstate Commerce Act of 1887 been put into effect before a movement was underway to amend it. Strictly speaking there were several separate movements ema-

<sup>9</sup> *Wabash Railway Company v. Illinois*, 118 U. S. 557 (1886).

<sup>10</sup> Conference report approved by Senate 37 to 12, January 14, 1887, by the House 219 to 41, January 21, 1887. See R. E. Cushman, *The Independent Regulatory Commissions* (New York, Oxford University Press, 1941), pp. 40-45.

<sup>10a</sup> Allan Nevins, *Grover Cleveland* (New York, Dodd, Mead and Company, 1933), p. 355. "With the passage of the Cullom bill Cleveland had little to do though Senator Cullom tells us that he was 'keenly interested' in the subject."

nating from different sources and motivated by sharply divergent forces. Almost immediately the Interstate Commerce Commission itself became a potent element in the struggle for amendment and Senator Cullom and his associates continued to press for broader power. But the first important change in the law came neither from socially-minded congressmen nor from the Interstate Commerce Commission but from the railroads themselves. The Elkins Act of 1903 was pushed through Congress by the railroads to protect themselves from the demands of the large corporations for rebates, special rates, and other forms of discrimination that deprived them of revenue. The act provided that it was unlawful for railroads to charge rates other than those appearing on their published schedules, and imposed a fine of \$20,000 for violation. In reality, the Elkins Act of 1903 was not part of the general growth of governmental control over the railroads with which we are especially concerned. Of the act Professor Ripley remarks:

The ease and decorum with which this legislation was passed is, in itself, eloquent testimony to the organized influence of the railroads over Congress, which made itself felt during the next few years in opposition to further changes in the law for the benefit of the public. . . . When the carriers themselves asked for more stringent legislation, it was accorded by Congress with commendable despatch.<sup>11</sup>

#### THE HEPBURN ACT OF 1906

A movement for important changes in the Interstate Commerce Act began to take form about 1894. In that year the Senate Committee on Interstate Commerce, still under the influence of Senator Cullom of Illinois, reported a bill increasing the powers of the Interstate Commerce Commission, but nothing happened. In 1899, bills aiming to confer rate-making power upon the Interstate Commerce Commission were intro-

<sup>11</sup> W. Z. Ripley, *Railroads: Rates and Regulation* (New York, Longmans, Green and Company, 1912), pp. 492-492.

duced in the Senate by Senator Cullom and also by Senator Chandler of New Hampshire. Again nothing happened. Additional bills were introduced in 1902 and 1903 in both the House and the Senate. In spite of the valiant fight that Cullom, Nelson, Chandler, and their confreres were waging for more effective regulation, the defensive weapons of the railroads were too great. The Senate at this time was dominated by a conservative clique among whom were Aldrich of Rhode Island, Hale of Maine, Gallinger of New Hampshire, Platt and Depew of New York, Foraker of Ohio and Kean of New Jersey. These men and others were popularly dubbed "railroad senators" because of their affinity for policies which left railroads strictly alone. Senator Elkins of West Virginia, chairman of the powerful and important Senate Committee on Interstate Commerce, was himself a railroad magnate. It is little wonder that legislation extending government control made little headway in the Senate. Unless additional help could be found from some other quarter, stalemate confronted the reform group. President Roosevelt undertook to supply the needed impetus. In his fourth annual message on December 6, 1904, he dealt with railroad legislation at some length.<sup>12</sup> He recommended legislation declaring rebates unlawful, and urged that Congress confer upon the Interstate Commerce Commission the power, where it found railroad rates unreasonable, to decide what a fair rate should be and impose it in that particular case. He did not favor giving the commission full and general authority to fix all rates, but confined his recommendations to apply to those cases where injustice was present. President Roosevelt's proposals were not original. He was merely endorsing the program which individual congressmen had been expounding for the past decade. Under this additional stimulus the Esch-Townsend bill,<sup>13</sup> an administration measure following

12 J. D. Richardson, *A Compilation of the Messages and Papers of the Presidents, 1789-1908* (New York, Bureau of National Literature and Art, 1909), X, 310.

13 H. R. 18588, 58th Cong., 3rd Sess.

the pattern already outlined, was passed in the House by a vote of 326 to 17. In the Senate the Committee on Interstate Commerce held hearings from December 16, 1904, until February 23, 1905, on several bills amending the act of 1887.<sup>14</sup> The Cooper-Quarles bill (S. 2429, 58th Cong., 2nd Sess.) giving the Interstate Commerce Commission power to set specific rates where the existing rates were found to be unreasonable seemed to receive most attention from the sincere advocates of further regulation. The Senate failed to act on either bill, but did pass a resolution instructing its Committee on Interstate Commerce to hold hearings during the summer.<sup>15</sup> This committee held hearings throughout the summer of 1905, amassing more than five thousand pages of testimony and statistical data.<sup>16</sup> Much of this testimony was valuable but the impression persists that its accumulation was incidental and that the real purpose of the extended hearings was to forestall legislation for another session.

In his fifth annual message, President Roosevelt again recommended increasing the powers of the Interstate Commerce Commission.<sup>17</sup> He devoted several pages to a detailed summary of the evils of railroad operation and urged immediate action. The House committee responded by reporting out the so-called Hepburn bill (H. R. 12987, 59th Cong., 1st Sess.) by a unanimous vote.<sup>18</sup> The Hepburn bill, many features of which had formerly appeared in the Esch-Townsend bill of the previous session, was passed by a vote of 346 to 7 on February 8, 1906, following some five weeks of debate. After considering the bill

14 Hearings before Senate Committee on Interstate Commerce on bills to amend the Interstate Commerce Act, 59th Cong., 1st Sess., S. Document 243, 771 pages.

15 S. Resolution 288, 58th Cong., 3rd Sess., March 2, 1905.

16 S. Document 243, 59th Cong., 1st Sess., II, III, IV, V, 4570.

17 Richardson, *op. cit.*, XI, 1135-1140.

18 H. Report 591, 59th Cong., 1st Sess., January 30, 1906.

for a fortnight the Senate committee voted to report it favorably.<sup>19</sup>

Senator Elkins, the committee chairman, refused to handle the bill before the Senate. By a shrewd move calculated to condemn it to ultimate failure, Aldrich so maneuvered it that the bill was reported out by Senator "Pitchfork Ben" Tillman of South Carolina. Besides being a member of the minority party, Senator Tillman was outspokenly opposed, both politically and personally, to President Roosevelt. Both men were so sincere in their desire to push the bill through that they attempted valiantly to work together in its behalf. Before the struggle was over their temporary entente came apart at the seams amidst mutual charges and recriminations, but this rupture did not prove fatal to the bill itself. Its survival and ultimate triumph was a tribute to them both.

When the opposition which Roosevelt had to overcome is considered, it seems miraculous that he came off victor in the end. Not only was he opposed by one of the most powerful cliques ever known in the entire history of the Senate. The press, including most of the major dailies of the country, was almost unanimously hostile; it cooperated wholeheartedly in the extravagant publicity and propaganda campaign launched by the railroads against the Hepburn bill. The President accepted the challenge with gusto. He turned their own weapons against them and by exceedingly skillful utilization of the avenues of public information marshaled the forces of public opinion behind him. In the end he prevailed and the bill emerged from the Senate with its vitality unimpaired.<sup>20</sup>

19 S. Report 242, 59th Cong., 1st Sess., February 26, 1906.

20 For detailed and sometimes contradictory accounts of the struggle over the Hepburn Act, see, Joseph B. Bishop, *Theodore Roosevelt and His Time* (New York, Charles Scribner's Sons, 1920), II, 1-3; Winthrop M. Daniels, *American Railroads* (Princeton, Princeton University Press, 1932), pp. 73-79; W. Z. Ripley, *Railroads: Rates and Regulation* (New York, Longmans, Green and Company, 1912), pp. 491-506; N. W. Stephenson, *Nelson W. Aldrich* (New York, Charles Scribner's Sons, 1930), pp. 286-321; Mark Sullivan, *Our Times* (New York, Charles Scribner's Sons, 1930, III, Pre-War America), 226-276.

Despite the bitter debate, the Senate approved the bill 71 to 3 on May 18, 1906.

The influence of President Roosevelt can not be doubted. Without the constant pressure that he exerted throughout the months of the struggle, it seems certain that the legislation would have failed. This much was admitted by those sponsoring the bill during the closing days of debate, although it was pointed out that the ideas in the bill had not originated with him. The single most important feature of the Hepburn Act was its explicit delegation to the Interstate Commerce Commission of a restricted rate-making power. This central idea as well as most of the other provisions of substantive importance had been advocated by members of Congress for years before President Roosevelt emerged as its champion. His contribution in catalyzing congressional sentiment so as to make positive action possible should not be allowed to cover up this fact.

Following the favorable vote in the Senate, the bill went to conference to resolve the differences between the two houses. Two successive conference reports were rejected by the House, and not until June 28, 1906, did that body finally approve the third report from the conference committee.<sup>21</sup> The following day the Senate approved the report and thus ended legislative action on the Hepburn bill.

It has been claimed by some that the real victory lay with Senator Aldrich and his associates inasmuch as President Roosevelt was forced to accept such extreme amendments that his measure was rendered impotent. Quite the contrary seems to have been the case. Writing shortly after the bill had been passed Professor Dixon, a careful student of railroad problems, observed, "A comparison of the measure which became law with the Hepburn bill as it passed the House reveals the fact that, in the face of determined opposition, the country had se-

<sup>21</sup> The successive conference reports were: H. Report 4657, H. Report 5003, and H. Report 5076, 59th Cong., 1st Sess., the date of the final report was June 28, 1906.

cured a much more radical statute than the President or his supporters in the House had any reason to expect.”<sup>22</sup> Similarly, writing from the perspective of six years, Professor Ripley concluded, “it [the Hepburn Act] was an historic event—the most important, perhaps, in Theodore Roosevelt’s public career,—and a not insignificant one in our national history.”<sup>23</sup>

### THE MANN-ELKINS ACT OF 1910

The Republican platform of 1908 urged further railroad legislation, and President Taft interpreted his election as a mandate.<sup>24</sup> In a special message to Congress on January 10, 1910, he outlined and urged favorable action upon a bill which had already been drawn by Attorney-General Wickersham under his direction.<sup>25</sup> The bill was immediately introduced in both houses.<sup>26</sup> Mr. Wickersham was in close contact with both committees during their consideration of it. Extensive changes were made in the original bill before it was reported out in the Senate March 7, 1910.<sup>27</sup> Two minority reports supplemented the majority report which recommended favorable action. The first minority report signed by Senators Cummins and Clapp opposed the bill for not going far enough in its regulatory provisions, and because it called for the creation of a Court of Commerce to review the decisions of the Interstate Commerce Commission. The second minority report signed by Senator Newlands criticized the bill because of its administrative origin

<sup>22</sup> Frank H. Dixon, “The Interstate Commerce Act as Amended,” *Quarterly Journal of Economics*, XXI, 25 (November, 1906).

<sup>23</sup> Ripley, *op. cit.*, p. 499.

<sup>24</sup> The Democratic platform was much broader than that of the Republican party; it provided for genuine amplification of the Interstate Commerce Commission’s power over rates.

<sup>25</sup> “By my direction the Attorney-General has drafted a bill to carry out these recommendations, which will be furnished upon request to the appropriate committee whenever it may be desired.” *Congressional Record*, 61st Cong., 2nd Sess., p. 463, January 10, 1910.

<sup>26</sup> S. 6737 and H. R. 17536, 61st Cong., 2nd Sess.

<sup>27</sup> S. Report 355, 61st Cong., 2nd Sess., March 7, 1910.



and advocated a substitute bill providing for the national incorporation of all railroads.

Senator Cummins opened the debate on March 15, 1910. His speech which was more than ten hours in length and extended over four days was the single most comprehensive discussion. His opening remarks are worthy of extended quotation.

This bill is not the product of any Senator or of any Member of the House of Representatives, and it has never been considered by the Interstate Commerce Committee of the Senate in the sense in which it is the obligation of every committee of the Senate to consider the bill before it is reported. According to the unchallenged reports of the public press, certain gentlemen, namely, the Attorney-General, the Solicitor-General, the Secretary of Commerce and Labor, two members of the Interstate Commerce Commission, and a Representative in Congress, met in New York on the 30th day of August of last year to consider and put in the form of a bill the views which the President of the United States had at various times expressed with regard to amendments of the interstate commerce law. This supervisory and unofficial commission, I will assume, acted under the invitation or command of the President.<sup>28</sup>

There was much more in this same vein from Senator Cummins and other members of the Senate. It was pointed out that even President Roosevelt in his sponsoring of railroad legislation had not considered it proper to go beyond making general recommendations and leaving the task of drawing up the specific bill where it rightfully belonged, with Congress.

The controversy over the authorship of the original bill was time wasted, for the changes made via the amendment route in the Senate were so numerous and so far-reaching that the bill was scarcely recognizable as it emerged. Except for the provision creating a Commerce Court, virtually every other important clause was changed. Because of the exceedingly able

efforts of the Insurgent Republicans led by Senators Cummins, Clapp, LaFollette, and Nelson, the regulatory provisions were made more stringent than those in the original bill had been. On June 3, 1910, the Senate passed the bill by substituting it for the House bill (H. R. 17536, 61st Cong., 2nd Sess.) which had been approved almost a month before. On the final vote of 50 to 12, all of the Insurgents present voted for passage, stating that the amendments had met their demands.

Action in the House began on April 4, 1910, when the bill as reported out by the Commerce Committee came up for debate.<sup>29</sup> Here, also, there was a minority as well as a majority report. Here no less than in the Senate there was much indignation at the manner in which the whole thing had been handled. Both the majority and minority reports referred to the activity of the Attorney-General, and although the language of the majority report is merely descriptive rather than critical the suspicion lingers that it went out of its way to relate the procedure that had been followed. Three quotations from the introductory statement follow :

p. 1. The bill under consideration was introduced by Mr. Townsend, on January 10, last, and as introduced is the bill drafted by the Attorney-General and referred to in the Message of the President.

p. 6. A number of amendments were suggested by the Attorney-General who drafted the original bill.

p. 13. Subsequently new propositions were prepared and submitted by the Attorney-General who had drafted the original bill.

The minority report took no pains to hide its indignation at the action of the administration :

We challenge any member of Congress to point to any instance in the past history of our Republic where a bill was submitted to a committee of the Congress, drawn at the in-

stance and aid of the President of the United States and declared to be the President's bill, and should be made a law.

Debate followed much the same pattern that it had in the Senate and numerous amendments were added before the bill was finally approved on May 10, 1910, 201 to 126.

Even during the conference stage it was charged that the administration was attempting to impose its will upon the proceedings. These charges must be interpreted broadly, however, in view of the product that came from the conference committee, for the provisions insisted upon by the Insurgents during the initial amending process were left intact in the final draft. Both houses approved the conference report without record vote.

In the final analysis, the influence of President Taft on the substance of the Mann-Elkins Act was in no sense commensurate with the volume of malediction that the occasion called forth. In the first place, the provisions of the original bill drafted by Attorney-General Wickersham were not new. Even the provision for a Commerce Court, in many respects the most radical innovative section, had been considered before. The Esch-Townsend bill of 1903-1904 had carried a provision for a Court of Transportation, which in composition and functions was almost identical with the Taft proposal.<sup>30</sup> As for the provisions sharpening the powers of the Interstate Commerce Commission so as to permit it to suspend proposed changes in rates, and the strengthening of the long and short haul clause,

<sup>30</sup> President Taft's achievement in salvaging his sole recommendation, the Commerce Court, was short-lived. In 1913 it was abolished, never to be revived. The comment of Senator Borah at the time it was scrapped is interesting: "The Commerce Court was created under the lash. It did not represent the judgment of the Senate or of Congress at the time it was created. It was created under the influence of the Executive authority and against the judgment of the Legislature which enacted the law. It has never been satisfactory because it did not receive the deliberate judgment and deliberate affirmation of Congress in the first place. It was not asked for by the people. There was no public demand for it." *Congressional Record*, 63rd Cong., 1st Sess., p. 5427, October 3, 1913.

both of these as well as other minor but important changes were the handiwork of Congress rather than of the administration.

The contemporary comments of F. H. Dixon, shortly after the passage of the act, indicate that while Taft's influence in pushing this legislation was considerable in that he did exert genuine party leadership in its support, the fact remained that the most valuable provisions were written not by the administration but by the Insurgents backed by Democrats, and that they were literally wrung from the conservative Republican leaders who had originally undertaken to write the amendments. He concludes: "The complete transformation of the proposals of the administration into a measure far more radical than was intended by its authors finds its explanations in the demands of the people of the country, constantly becoming more insistent, for genuine regulation of the industry upon which their very life depended."<sup>81</sup>

### THE VALUATION ACT OF 1913

Between the struggle over the Mann-Elkins Act and the Transportation Act of 1920 there was a steady stream of minor acts affecting the railroads, but none received great public attention. Wilson's administration though marked by comprehensive changes in the relation of government and business did not include any major railroad legislation until the postwar Transportation Act. Of the numerous laws amending the basic railroad statutes during the years spanning this period, one, the Railroad Valuation Act of 1913, was at the time thought to be of particular importance. Almost constantly since 1903 the annual reports of the Interstate Commerce Commission had advocated legislation empowering it to evaluate the property of common carriers within its jurisdiction as a necessary step in making its rate-making power effective.<sup>82</sup> Finally Congress, largely

<sup>81</sup> *Quarterly Journal of Economics*, XXIV, 593-633 (1910).

<sup>82</sup> See Interstate Commerce Commission, *Annual Reports* (1903, 1907 to 1912). Of this act Professor Sharfman comments: "The Valuation Act has

through the personal efforts of Senator LaFollette, without fanfare and after little public discussion, approved legislation granting this power. This provision was legislative in its inception and execution, although the credit for calling it to the attention of Congress and of repeating its reminders until recognition had been granted goes to the Commission itself.

### THE TRANSPORTATION ACT OF 1920

The Transportation Act of 1920 came at the time the railroads were returned to private ownership after the wartime period of government operation and is generally associated with the problems growing out of this immediate situation. Actually, the issues passed upon in the 1920 act were much broader in scope and extended back far beyond the war period. Problems of destructive competition, duplication of facilities, and overcapitalization of securities had caused President Wilson concern during the first years of his administration. He gave voice to this concern on December 7, 1915, when he urged Congress to create a commission to investigate the entire railroad problem and make recommendations for constructive legislation. Acting upon his suggestion, Congress by joint resolution created a joint subcommittee of the Senate and House interstate commerce committees on July 20, 1916. This committee, popularly known as the Newlands Committee, held hearings from November 20, 1916, to December 19, 1917, (64th Cong., 1st Sess.). Before this committee was ready to report the United States entered the World War and the railroads were taken over by the national government.

Just a month after the Armistice the railroad issue again claimed the headlines when William G. McAdoo, Director-General of the Railroad Administration, proposed that federal

unquestionably proved to be the most far-reaching legislative enactment of this period, both because of its intimate relationship to the regulative processes which now prevail, and because of the immensity and complex character of the task which it imposed upon the Interstate Commerce Commission." I. L. Sharfman, *The Interstate Commerce Commission* (New York, The Commonwealth Fund, 1931), Part I, p. 117.

control should be extended for five years. Adverse reaction was sharp. The press was almost unanimous in its opposition, while Congress showed its displeasure by immediately taking steps toward return of the roads to their owners. The natural result was a veritable flood of proposals for the best method of making the transition back to private control and the issues which had prompted the investigations two years before again came to the fore. The joint subcommittee which had suspended its investigations at the outbreak of the war did not resume, but each house began its own independent activities. The House Committee on Interstate and Foreign Commerce held hearings from January 8, 1918, to January 29, 1918, and again from July 15, 1919, until October 4, 1919. The Senate Committee on Interstate Commerce held hearings from December 29, 1917, to January 26, 1918, and again from January 3, 1919, with some interruptions until October 23, 1919. Never before in the history of railroad legislation had there been such intensive or comprehensive discussion of the issues.

On June 2, 1919, a bill (H. R. 4378 and S. 1256, 66th Cong., 1st Sess.) was introduced in both the House and Senate. This bill, known henceforth as the Esch-Pomerene bill, was chiefly the product of the Interstate Commerce Commission. The measure was conservative in that it did not depart from the pattern which had existed before the war. It did not mention several of the most thorny problems. Matters relative to labor conditions, consolidation of roads, valuation, reserve funds, government guarantees, etc., received no recognition at all. The bill served, however, as the basis of committee hearings in both houses, but before any kind of action was taken numerous other bills were also thrown into the hopper. Among these was the Sims bill (H. R. 8157) which represented the views of the railroad brotherhoods. It was the only bill that proposed government ownership as a solution. Popularly known as the Plumb Plan, after its author, Glenn E. Plumb, general counsel for the railway employees, it was widely discussed but was never seriously considered by Congress for there was no sentiment at

this time for further extension of public control. Other bills included S. 2998, known as the Frelinghuysen bill, and representing the views of the United States Chamber of Commerce; S. 2889, introduced by Senator Lenroot, and identified as the Amster Plan, representing the program endorsed by the Citizens National Railroad League. In addition, plans were suggested by the Association of Railway Executives, the National Association of Owners of Railroad Securities, the Investors' Protective Association, and others.<sup>33</sup>

Besides the recommendations made by the Interstate Commerce Commission, some of the individual members of the Commission offered suggestions of their own. Moreover, in addition to the original proposal of Director-General McAdoo, his successor, Director-General Hines, also presented and defended a lengthy plan. These were the only administrative suggestions before Congress. If President Wilson took an active part in the formulation of the new legislation, he did it in a much more circuitous and elusive manner than had been his custom heretofore. Actually, none of the suggestions coming from the various agencies, or from their members bore any claims that they enjoyed presidential favor. The fact is that consideration of the railroad issue came at a time when the President was not in a position to give it any extensive consideration. In the beginning he was preoccupied with the problems growing out of the Armistice; his attention was monopolized by foreign affairs to the total exclusion of domestic issues. Later, when the bill was actually before Congress, he had already been re-

33 The Transportation Act of 1920 was unusual in view of the large number of specific plans proposed by the various groups. Usually the groups concerned tend to appear in support of or in opposition to some suggested plan rather than to make definite proposals. Perhaps the reason here lies in the fact that the existence of government control made *some kind of legislation necessary*, whereas in most other cases, the interests of many groups would be well served if *no legislation* were passed. For a detailed discussion of the legislative history of the act, see, I. L. Sharfman, *The American Railroad Problem* (New York, The Century Company, 1921), pp. 382-431; Rogers MacVeagh, *The Transportation Act of 1920* (New York, Henry Holt and Company, 1923).

tired from active contact with what was going on by the physical collapse he had suffered during his campaign in support of his League of Nations proposal.

Congress was left to deal with the railroad issue in its own way. In the House a subcommittee of the Committee on Interstate and Foreign Commerce held hearings throughout the summer of 1919 on the Esch bill and others that had been introduced.<sup>34</sup> On October 30, 1919, this subcommittee reported a new bill<sup>35</sup> to the full membership of the committee, and ten days later it was reported to the House where it was debated from November 11 to November 17, approved, and sent on to the Senate where proceedings were already well underway. After extensive hearings early in the year a Senate subcommittee had likewise labored during the summer of 1919 to draft a new bill which was introduced by Senator Cummins on September 2, 1919.<sup>36</sup> This bill, the first of the Cummins bills, was immediately referred to the entire Senate Committee on Interstate Commerce which held almost continuous sessions on it until well into October. On October 22, 1919, a much amended and revised bill<sup>37</sup> was introduced in the Senate as a substitute for the first Cummins bill and was also referred to the commerce committee. Some further revisions were made before the bill was finally reported out by Senator Cummins on November 10, 1919.<sup>38</sup> The Senate debated the Cummins bill from December 2 until December 20, then passed it as a substitute for the Esch bill which had already been approved by the House, thus sending the two bills to conference for reconciliation. Neither bill had suffered serious modification during the debate

<sup>34</sup> Members of the subcommittee were: Esch, Sims, Hamilton, Winslow, and Barkley.

<sup>35</sup> H. R. 10453, 66th Cong., 1st Sess.

<sup>36</sup> S. 2906, 66th Cong., 1st Sess.

<sup>37</sup> S. 3288, 66th Cong., 1st Sess.

<sup>38</sup> S. Report 304, 66th Cong., 1st Sess., November 10, 1919; supplemented on November 17, 1919.



stage, hence they went to conference in substantially the same form in which they had emerged from committee.

Both bills were fundamentally congressional products. Yet they were totally dissimilar not only in form but in philosophy and emphasis. The Esch bill attacked the railroad problem from the conventional point of view. It looked back to what had existed before the World War and attempted to return to a pattern similar to that, adding such modifications and alterations as seemed essential to accomplish desirable results. This plan while drafted by the subcommittee, was influenced by the recommendations of the Interstate Commerce Commission to which the subcommittee looked for suggestions. On the other hand the Senate (Cummins) bill reflected a desire to strike out boldly in new directions in an effort to accomplish a more thorough-going solution to the entire railroad problem. It visualized a program embracing all aspects of railroad operation, including systematic consolidation of all roads into some thirty or thirty-five systems which would be incorporated under a federal act. Rates would be fixed so as to guarantee, in effect, a fair return on the investment of each system, and in order to accomplish this, provision was made for the recapture of all earnings in excess of 6 per cent of the valuation of the investment. Furthermore, the bill carried elaborate machinery for dealing with issues arising out of wages and working conditions. Many of the ideas that went into the Cummins bill had been expressed in one or more of the several bills that had been before the committee, but the stamp of senatorial authorship definitely belongs upon it.

The task of working out a compromise between two bills so totally unlike in their approach was difficult and dangerous. Of the two, the Senate bill was much the more unpopular among those directly interested. The so-called radical features of the Cummins bill did not meet with approval either from the railroads themselves, their securities holders, or from organized labor. It was in such a setting that the bill went to conference on December 20, 1919, not to emerge until February 18, 1920.

The conference product was a victory for the House measure in almost every section.<sup>39</sup> Except for the financial provisions, including the famous "recapture clause," which was retained chiefly through the valiant efforts of Senator Cummins, all of the innovations of the Senate proposal were struck out in favor of the milder provisions of the House bill. Because of its later bearing upon the Railway Labor Disputes Act of 1926 (discussed in the section on Labor), Title III of the Transportation Act of 1920 deserves special mention. As finally approved by the House, Title III of the Esch bill provided for voluntary arbitration of wage and other labor disputes. This provision, although still unpopular with the brotherhoods, was definitely more moderate than earlier House proposals which had either provided for compulsory arbitration or prohibited strikes. In the Senate, however, despite vigorous protests from LaFollette and others, both compulsory arbitration and anti-strike provisions were retained when the bill was approved late in December. Undoubtedly the unsettled labor conditions which had produced several strikes throughout the fall of 1919 contributed to the severity of the Senate bill.

The Senate conferees insisted upon retaining their more stringent provisions but the House managers refused to yield. President Wilson made no overt move to influence proceedings at this time, but it may be that his declaration on December 2, 1919, in his annual message, that "The right of individuals to strike is inviolate and ought not to be interfered with by any process of government . . ." provided the necessary fillip because in the end it was the Senate which gave way.<sup>40</sup> The conference report was debated at some length in both houses but was approved. The vote in the House was 250 to 150, on February 21, 1920, and in the Senate 47 to 17, on February 23, 1920.

<sup>39</sup> H. Report 650, 66th Cong., 2nd Sess., February 18, 1920.

<sup>40</sup> See H. D. Wolf, *The Railroad Labor Board* (Chicago, University of Chicago Press, 1927), pp. 73-89, for a detailed account of the controversy over the labor provisions of the Transportation Act of 1920.

The long and tortuous history of the Transportation Act of 1920 came to a close on February 25, 1920, when President Wilson attached his signature. That he took little pride in the event is indicated by his comment afterward in referring to his approval of it. He said of it, it was "so unsatisfactory that I could accept it, if at all, only because I despaired of anything better."

This act, which was described shortly after its passage as the "first constructive railroad legislation enacted by Congress since the land grant acts passed in 1863 and 1866," was congressional not only in origin but also in most of the ideas that went into it, and its passage through Congress was accomplished without noticeable intervention from administration forces.

#### THE HOCH-SMITH RESOLUTION OF 1925

Worthy of mention in the interval between the Transportation Act of 1920 and the Emergency Transportation Act of 1933 is the Hoch-Smith Resolution of 1925. Although this resolution dealt with the work of the Interstate Commerce Commission, it was concerned not with broadening or extending that tribunal's powers but with directing its operations. For this reason, the action of Congress is important in that it is precursive of a tendency which was to become much more pervasive two decades later.

The resolution was the embodiment of steadily increasing sentiment within Congress for governmental action to relieve the depressed condition of agriculture. Railroad rates, always a familiar target for the friends of the farmer, became the object of congressional attention. A resolution, approved January 30, 1925, directed the Interstate Commerce Commission to investigate and "effect with least practicable delay such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture . . . at the lowest possible lawful rates compatible with the maintenance of adequate transportation service."<sup>41</sup>

## THE EMERGENCY RAILROAD ACT OF 1933

After a few years of trial the Transportation Act of 1920 revealed certain functional weaknesses. Furthermore, the railroads, forced to meet new forms of competition under conditions increasingly less favorable to themselves, were not in any condition to weather the additional strains of the general business depression after 1929. A whole series of circumstances and causes added to the seriousness of their plight. Certain decisions of the Supreme Court over policies of property evaluation for rate-making purposes handicapped the Interstate Commerce Commission in its administration of the law, thus adding uncertainty to the other complexities of operation. The inability of the railroads and the Interstate Commerce Commission to reach any common agreement on the meaning of the recapture clause had prevented it from being applied except on a very minor scale.

All of these conditions indicated that further legislation was essential before a constructive railroad policy could be hoped for. During the years preceding 1933 Congress had kept itself abreast of developments. Between 1924 and 1933 the commerce committees of both houses had devoted much time to railroad matters. Hearings had been held by both committees on railroad consolidation, amendment or repeal of the recapture clause, the long-short haul controversy, and the general problem of rates and rate-making. The testimony and evidence collected by each committee during the course of its hearings had run well over three thousand pages. The large number of people appearing had guaranteed that the various shades of opinion had been fairly well canvassed. Notwithstanding this activity, and even though the Interstate Commerce Commission was not only favorably disposed toward most of the legislation suggested but frequently was the prime motivating force behind it, no important railroad legislation (except the Railway Labor Disputes Act of 1926, discussed under Labor) materialized between 1920 and 1933.

The immediate prelude to 1933 began in January 24, 1930, when the House approved H. Resolution 114, authorizing the Committee on Interstate and Foreign Commerce to investigate railroad holding companies and recommend legislation. For this task the House committee employed Dr. W. M. W. Splawn to direct the investigation. The resulting report, a document of 1742 pages, included a bill imposing regulation upon railroad holding companies by bringing their financial activities within the supervision of the Interstate Commerce Commission.<sup>42</sup> No action was taken on this bill nor upon two companion bills dealing with the recapture clause, rate-making, and a new base for railroad property valuations.<sup>43</sup> All of these bills, though introduced by Mr. Rayburn, had been worked out in close cooperation with members of the legislative committee of the Interstate Commerce Commission.

After extended hearings the House committee made a few minor changes in these bills and reported them out.<sup>44</sup> In the scrimmage between President Hoover and Congress over relief problems the railroad bills were crowded off the calendar until President Roosevelt adverted to that subject the following May.

The financial condition of the railroads had become acute by the time the Democratic administration took office. It was clear that some kind of emergency action by Congress would be necessary if the financial structure of the entire industry was not to be jeopardized. Shortly after his inauguration the President asked his newly appointed Secretary of Commerce, Daniel C. Roper, to review the railroad problem and recommend appropriate legislative relief. Flooded with plans for railroad reorganization from many sources, Mr. Roper set up a temporary agency to hear the advocates of the various proposals. This agency was composed of three members of the Interstate Com-

42 H. Report 2789, 71st Cong., 3rd Sess., February 20, 1931.

43 H. R. 7116 and H. R. 7117, 72nd Cong., 1st Sess.

44 Hearings before the House Committee on Interstate and Foreign Commerce on H. R. 9059, 72nd Cong., 1st Sess., February 17-24; March 1-24, 1932. 281 pages.

merce Commission and several members of the staff of the Department of Commerce. Shortly afterward, Mr. Roper created a more stable committee of three: J. B. Eastman, Chairman of the Legislative Committee of the Interstate Commerce Commission; W. M. W. Splawn, special counsel to the House Committee on Interstate and Foreign Commerce; and A. Lane Cricher, Chief of the Transportation Division in the Bureau of Foreign and Domestic Commerce in the Department of Commerce. This committee held hearings and received written statements from all who wished to offer suggestions. These suggestions ranged all the way from completely drafted bills to specific proposals dealing only with some relatively narrow phase of the problem. Among the former, a bill representing the views of the railroad industry, presented by Carl R. Gray, President of the Union Pacific, F. E. Williamson, President of the New York Central, and J. J. Pelley, President of the New Haven Railroad, held the most prominent place. It called for government protection of railroad revenues and expenses but recommended no consolidation. Administration was to be left up to regional committees of the railroads themselves rather than to some governmental agency.

Mr. Roper's committee rejected this bill because it placed too much power in private hands, but drafted a bill of its own in which some of the suggestions of the railroad bill were incorporated in modified form. The committee bill was used by the President as a basis for several conferences with representatives of all interests concerned. Mr. Roosevelt then appointed a new committee to draft a bill in the light of all the suggestions that had been offered during the series of conferences just held. This committee, composed of Commissioner Eastman, Secretary Roper, Secretary of the Treasury Woodin, Mr. Splawn, and Sam Rayburn and Clarence C. Dill, chairmen of the House and Senate commerce committees, drafted the bill which accompanied the President's message on railroads of May 4, 1933.<sup>45</sup>

<sup>45</sup> S. 1580, and H.R. 5500, 73rd Cong., 1st Sess.

The bill was in two parts. Title I contained the emergency provisions setting up a new office of Coordinator with broad discretionary powers over virtually all phases of railroad activity. This part was new. It was intended to meet the emergency conditions then confronting the railroad industry and was purely temporary in scope. The second part, Title II, amended the basic statutes governing railroads along the lines already suggested in previous bills. Sections dealing with holding companies, a new rate-making rule, and repeal of the long quiescent recapture clause, made up the major portion of this title and were contemplated as permanent changes in national railroad policy; thus, the bill was a mixture of old and new as it went before the congressional committees for hearings and revision.

Both committees held hearings.<sup>46</sup> Although brief, the evidence gathered was full of informative comments on the probable working of the bill. Besides Secretary Roper, Messrs. Eastman and Splawn appeared for the administration point of view. Donald Richberg, appearing for the railroad brotherhoods, was the single most vigorous opponent of the bill. The railroad industry voiced general approval but suggested some amendments. One of the most interesting witnesses was N. L. Amster of the Citizens National Railroad League. His proposal for a national railroad corporation called to mind that he had pushed the same idea unsuccessfully during the hearings on the Transportation Act of 1920 more than a decade before.

After ten days of more or less perfunctory consideration, the Senate Committee on Interstate Commerce reported S. 1580 favorably.<sup>47</sup> Except for reducing the power of the Coordinator to dismiss employees as an incident to consolidating roads for

<sup>46</sup> Hearings before the Senate Committee on Interstate Commerce, 73rd Cong., 1st Sess., on S. 1580, May 9 to 12, 1933, 223 pages. Hearings before the House Committee on Interstate and Foreign Commerce, 73rd Cong., 1st Sess., on H. R. 5500, May 8 to 22, 1933, 297 pages.

<sup>47</sup> S. Report 87, 73rd Cong., 1st Sess., May 15 (calendar day May 22), 1933.

purposes of economy (a concession to the political potency of the railroad brotherhoods), the committee had made no important changes.

The Senate debated the measure only two days. Except for a rather detailed defense by Senator Dill the measure seemed to have few supporters. Perhaps the real cause of its dearth of vocal defenders was the highly technical nature of its provisions. Unless a person had made a careful study of railroad regulation he courted embarrassment because the number of informed opponents was impressive. Long speeches attacking the bill were delivered by Senators Borah, King, and Long. Thirty committee amendments (for the most part devoted to softening the labor provisions) were adopted as were seven private amendments, all of a minor nature. Only one amendment was rejected although an additional amendment, offered by Senator Black, proposing a six-hour day for railroad employees, was withdrawn by Mr. Black upon Senator Dill's statement that President Roosevelt opposed it. The Senate approved the bill on May 27, 1933, without a record vote.

When the Senate bill reached the House, the House committee amended it by substituting its own version of the original administration bill as it had been modified in committee. Numerous changes had been made, particularly in Title I, and they were not all of a minor nature. This bill was reported to the House.<sup>48</sup>

The House considered the railroad bill under an open rule permitting three hours of general debate but this time was considerably extended for there was no disposition to rush matters. Debate was not spirited. Again, there seemed to be general hesitation in getting too deeply enmeshed in the intricacies of railroad economics. There was rather general criticism of the Senate labor amendments, the prevailing feeling being that too much freezing of existing labor conditions had taken place. The amending process was dull and fruitless. The rule permit-

<sup>48</sup> H. Report 193, 73rd Cong., 1st Sess., June 2, 1933.



ted free offering of amendments but Chairman Rayburn resisted all attempts to change the bill. Of the dozens offered, only one private amendment was accepted. House action was completed when the bill was approved without a record vote on June 5, 1933, after two days of consideration.

The conference report reconciling the differences between the two houses was notable in that it went far toward restoring the measure to the *status quo ante*.<sup>49</sup> It was approved without record vote by both houses; the House acted even before the committee report had been filed, upon being assured by Mr. Rayburn that the conferees in both houses had unanimously signed it.

The Emergency Railroad Act of 1933 has all of the earmarks of an administration bill. The entire movement from the appointment of Secretary Roper until final approval by the President has the appearance of being dominated by administration forces. Yet it would be unfair to ignore the contribution made by Congress. Title I of the bill received almost all of the attention. The spectacular possibilities implicit in the creation of a railroad dictator, as the proposed coordinator came to be called, tended to overshadow the more fundamental though relatively uninteresting provisions found in Title II. These provisions, the joint product of the House Interstate Commerce Committee and the Interstate Commerce Commission, were the outgrowth of several years' pre-occupation but they benefitted materially from the impetus created by the President's railroad message on May 4, 1933.

#### THE MOTOR CARRIER ACT OF 1935

Like its prototype, the Interstate Commerce Act of 1887, the Motor Carrier Act of 1935, the basic federal statute regulating transportation by motor carrier, received impetus from a Supreme Court decision holding state regulation invalid. In the

<sup>49</sup> The *New York Times* in reporting the bill's final passage stated, "It was approved virtually in the form in which it was laid before the Congress by the Administration." June 10, 1933, p. 2.

case of the railroad law, however, the action of the Court climaxed a movement which had been underway in Congress for several years, while judicial nullification of state regulation of motor carriers actuated a process that was to run for ten years before culminating in a law. When the Supreme Court ruled on March 2, 1925,<sup>49a</sup> that a state could not restrain wasteful competition and unnecessary operations in the motor carrier field by withholding the issuance of a certificate or a permit to an interstate carrier, the National Association of Railroad and Utilities Commissioners immediately pressed Congress to enact remedial legislation.<sup>50</sup> The first regulatory bill for motor carriers was introduced on March 3, 1925, by Representative Cable.<sup>51</sup> Between 1925 and 1935 thirty-four separate bills were introduced. Hearings were held by the interstate commerce committees of both houses in 1926, 1928, 1930, 1932 and 1934. This mass of data was supplemented by two investigations carried on by the Interstate Commerce Commission in 1926 and 1930.

Despite the acute need for a national law, the issues were so hotly contested before the congressional committees that year after year slipped by with no decision reached. Arrayed on one side in favor of federal regulation were the states, the Interstate Commerce Commission, the railroads, the bus operators, and some common-carrier truck operators. The chief opposition came from the automobile manufacturers, the organized shippers and the majority of truck operators. It remained for one of those external coincidences to precipitate action and again the Supreme Court supplied the motivating force. When the National Industrial Recovery Act was invalidated on May 27,

<sup>49a</sup> *Buck v. Kuykendall*, 267 U. S. 307 (1925).

<sup>50</sup> See Parker McCollester and Frank J. Clark, *Federal Motor Carrier Regulation* (New York, The Traffic Publishing Company, 1935) and James C. Nelson, "The Motor Carrier Act of 1935," *Journal of Political Economy*, XLIV, 464-504 (1936).

<sup>51</sup> H. R. 12474, 68th Cong., 1st Sess.

1935,<sup>51a</sup> the codes under which the American Trucking Association, Inc., had been operating were swept away. Immediately the Association reversed its previous opposition to the motor carrier bill in order to obtain through negotiation an act which would not be inimical to the interests of the trucking industry. President Roosevelt's special message on June 7, 1935, urging early passage of bus and truck regulatory legislation supplied additional stimulus and the Motor Carrier Act became law on August 9, 1935.<sup>52</sup> Like many other important laws enacted during the Roosevelt administration, its ultimate realization was inseparably bound up with a ten-year period of preliminary concern and study by Congress.

### THE TRANSPORTATION ACT OF 1940

The Emergency Transportation Act of 1933 was passed as a temporary expedient only. That portion of the act known as Title II had no terminating clause limiting its action to a specified period but it was limited in scope and made no pretense of covering all aspects of transportation. Between 1934 and 1939 the House Committee on Interstate and Foreign Commerce held extensive hearings on motor bus and truck regulation, amendment of the long and short haul clause, extension of the Emergency Act of 1933, regulation of freight train lengths, and the omnibus transportation bill of 1939. It was similar in the Senate. Beginning in April 1934, with hearings on the car length of freight trains, the Senate Committee on Interstate Commerce, or one of its subcommittees, was in almost continuous session on railroad matters throughout the entire period. Much of the time was taken up by the subcommittee investiga-

51<sup>a</sup> *Schechter Poultry Corporation v. United States*, 295 U. S. 475 (1935).

52 H. R. 5262, 74th Cong., 1st Sess.; this bill was introduced by Representative Huddleston of Alabama; a similar bill, S. 1629, was introduced by Senator Wheeler of Montana. The House bill prevailed. Previous bills which were important because of their influence upon the perfected act were: H. R. 6836, 73rd Cong., 2nd Sess., introduced by Representative Rayburn (the same bill was introduced as S. 3171 by Senator Dill) and S. 1635, 74th Cong., 1st Sess., the so-called Eastman Bill.

tion of railroad holding companies. This task, under the direction of Senator Wheeler, engaged the attention of a subcommittee from December 7, 1936, to April 1, 1938. The literary product of this search, including both oral testimony and printed evidence, reached the grand total of 10,987 pages.<sup>53</sup> In addition, the entire committee held extensive hearings on numerous other matters pertaining directly to railroad regulation. Part of this activity was stimulated by the action of President Roosevelt. In the spring of 1938 he appointed a committee of fifteen persons to consider the transportation problem in the United States and offer recommendations for its systematic solution. This committee, chaired by Commissioner Splawn of the Interstate Commerce Commission, and including among its membership two other members of the commission, Eastman and Mahaffie, reported that the problems fell into two groups—those of immediate concern and those involving matters of long term interest.

Subsequently, the President appointed a second group, a Committee of Six, composed of three members representing railroad management and three representing railroad labor.<sup>54</sup> The report of this committee, which reached him in December, 1938, was top-heavy in its concern with purely railroad problems. Its recommendations clearly reflected this predisposition in favor of the railroads. Conspicuous among its suggestions were: repeal of the long-short haul clause; creation of a Transportation Board to advise Congress concerning legislation on transportation of all kinds—the purpose here being to abolish all forms of subsidization allegedly prevalent in motor and water transportation; legislation relieving railroads of certain unjust tax burdens; elimination of all railroad crossings at federal expense; repeal of reduced rates to land-grant institutions; transfer of all railroad reorganizations to newly created reor-

<sup>53</sup> Hearings of the Senate Committee on Interstate Commerce, pursuant to S. Resolution 71, 74th Congress.

<sup>54</sup> The members of this committee were: M. W. Clement, Carl R. Gray, George M. Harrison, B. M. Jewell, E. E. Norris, and D. B. Robertson.

ganization courts, thus relieving the Interstate Commerce Commission of all authority over this subject; and legislation taking the responsibility over all railroad consolidations away from the Commission and vesting it solely in the railroads themselves.

The President forwarded this report to Congress, suggesting that its recommendations be used as a basis for legislation. In January, 1939, Chairman Lea of the House Interstate Commerce Committee introduced a bill embodying some but not all of the suggestions of the Committee of Six.<sup>55</sup> This bill which had been drafted with the aid of certain members of the Interstate Commerce Commission, served as the basis of hearings which extended from January 24 through March 3, 1939. Because the Lea bill did not incorporate some of the most cherished recommendations of the Committee of Six, a new bill embodying its ideas *in toto* was introduced in the House, March 7, 1939.<sup>56</sup>

After the close of the hearings the Lea bill was amended in some respects and a copy submitted to the Interstate Commerce Commission for its opinion. On March 22, 1939, the Commission submitted an elaborate report on the pending bill. While it gave general approval to the bill as written, it opposed reorganizing the Commission, eliminating the long and short haul clause, and relieving the Commission of responsibility in railroad reorganizations.

Early in April, Chairman Lea appointed a special subcommittee to draft a new bill in the light of the suggestions made by the Commission and other interested parties.<sup>57</sup> This committee labored over the details of the new bill for more than three months. Among its members were individuals who had served on this committee for many years and had become very well in-

<sup>55</sup> H. R. 2531, 76th Cong., 1st Sess.

<sup>56</sup> H. R. 4862, 76th Cong., 1st Sess.

<sup>57</sup> The personnel of this subcommittee included: Representatives Crosser, Bulwinkle, Cole, Wolverton, Holmes, Halleck, and Lea, Chairman.

formed on the railroad problems. Their influence was genuine. Much of the bill, though not original in the sense that its provisions were purely congressional innovations, was determined more by the thinking and experience of the committee members than by any other source. While the bill was in committee, Secretary of War Woodring wrote a long letter to Chairman Lea setting forth at length the reasons why the provision extending the jurisdiction of the Interstate Commerce Commission over water transportation was contrary to the interests of the War Department. About a month later Secretary of Agriculture Wallace wrote a similar letter to Speaker Bankhead putting the Department of Agriculture on record as also opposing the water transportation provisions of the pending bill.

Meanwhile, Senator Wheeler, Chairman of the Senate Committee on Interstate Commerce, and Senator Truman, second ranking Democratic member of the committee, introduced four transportation bills.<sup>58</sup> These bills, particularly S. 2009 which expanded the powers of the Interstate Commerce Commission, were adaptations of the basic recommendations of the Committee of Six but the Senate committee had done considerable rewriting.

Hearings were held on all these bills from April 3 to April 14, 1939. After the hearings, the committee prepared several amendments to be offered from the floor but reported S. 2009 out in the form in which it had been introduced.<sup>59</sup> A sharply worded minority report by Senator Shipstead stated that there was no public demand for regulation of water transportation, and that no public benefit would result from such a law. It was argued that the bill would result in rigid rates to the detriment of shippers, particularly farmers. The minority report also opposed the labor provisions of the bill, as well as the provisions for codifying the existing railroad statutes.

58 S. 1310, S. 2016, S. 1869, S. 2009, 76th Cong., 1st Sess.

59 S. Report 433, 76th Cong., 1st Sess., May 16, 1939.

The Senate spent four days on the bill. While several provisions came in for attack, the most persistent objection was directed at the section placing water transportation under the jurisdiction of the Interstate Commerce Commission. The fear was expressed that this administrative arrangement would result in discrimination against water transportation because of the railroad predisposition of the Commission. The opposition led by Senator Clark of Missouri and Senator Bailey of North Carolina strove unsuccessfully to attach amendments of fundamental import. On final vote, the measure passed on May 25, 1939, 70 to 6. For the moment at least the views championed by Senators Wheeler and Truman prevailed.

When the Wheeler-Truman bill reached the House, the House committee substituted its own bill as an amendment to S. 2009 by striking out everything except the title, and reported the bill out on July 18, 1939.<sup>60</sup> The House report was actually on the House bill which had been substituted for that approved by the Senate. A minority report signed by Representatives Charles L. South and J. W. Wadsworth argued that there was no need for the bill, and that some of the interests most intimately affected were strongly opposed. Excerpts of the letters from Secretaries Wallace and Woodring and Chairman Land of the United States Maritime Commission were quoted in support of this assertion.

On July 21, the day the House began debate on the railroad bill, the President referred to it during his press conference. In his remarks he urged that Congress give it right of way and pass it as quickly as possible. He said that the precise form of coordinating the several forms of transportation was not as important as getting a law passed providing for some form of coordination. The President made it clear that he had long been advocating such action and reminded his listeners that he had so urged in a message in 1935.<sup>61</sup>

<sup>60</sup> H. Report 1217, 76th Cong., 1st Sess., July 18, 1939.

<sup>61</sup> *New York Times*, July 22, 1939, p. 6.

During the six hours of general debate which dealt almost exclusively with Title II, "Regulation of Waterways," some exceedingly able speeches were made. The months of labor through which the committee members had gone had done much to expand and refine their information on the national implications of transportation. Although some of the speeches were frankly sectional in character, many were couched in broader terms. When the amendment stage was reached, numerous constructive changes were offered from the floor. Several amendments, some quite fundamental, were accepted in spite of vigorous attempts by Chairman Lea to have them rejected. A majority of the House was in favor of the bill, which had the backing of the President, but they insisted upon accepting it upon their own terms, and only after making such changes as they saw fit.

The House concluded its consideration by approving its version of the bill on July 26, 1939. A motion to recommit was defeated 273 to 99 indicating that here as in the Senate the vote had not been along party lines. Inasmuch as the two bills, or, strictly speaking the two versions of the same bill (S. 2009), differed in several important particulars, the task of the conference committee was difficult. There was little possibility of reaching an agreement before adjournment, consequently the whole matter went over until the following session.

Early in February, 1940, in a report to both committees, the Interstate Commerce Commission stated that it favored the House bill. Regarding a provision for complete recodification of railroad statutes which was in the Senate bill, the Commission expressed opposition. The report explained that while the Commission favored the idea of ultimate codification, the Senate bill was not acceptable because it had been written hurriedly and under difficulties which jeopardized its soundness. Several amendments to the House bill were submitted in the Commission's report.



On February 24, 1940, Senator Bailey made public a six thousand word letter signed by Secretaries Wallace, Woodring, and Admiral Land. The letter which was written in reply to a request from Senator Bailey was outspoken in its opposition to the pending transportation bill.

On March 8, 1940, President Roosevelt publicly repudiated the view of his cabinet members and Admiral Land.<sup>62</sup> Mr. Roosevelt told his press conference that the letter had been sent without his knowledge or consent. He then gave his endorsement to the Wheeler-Lea bill, water regulation and all, this time referring to a speech which he had made in Salt Lake City, Utah, in 1932, favoring consolidation of modes of transportation, to indicate once more his long-standing support of the idea.

A further move by the President on April 9 was interpreted by some observers as an added effort to encourage action by the conference committee which had immobilized the transportation bill since the previous July. He announced the appointment of Owen D. Young as chairman of a committee to study the entire problem of transportation consolidation from a long range point of view. Whether this move had any strategic considerations behind it or not, it did seem to stimulate the conferees, because on April 19 it was made known that they had come to an agreement. One of the most troublesome stumbling blocks had been the so-called Harrington amendment which had been added in the House. It provided that there should be no consolidations in situations where labor would be displaced. After much bicker and barter, this amendment was eliminated and all provisions regarding consolidations were omitted from the bill. The immediate reaction, even before the bill had been reported back from the conference committee, was adverse. Railroad unions demanded the reinstatement of the Harrington amendment. Organized agriculture renewed its cry that the only effect would be an increase in the farmers' trans-

<sup>62</sup> *New York Times*, March 9, 1940, p. 28.

portation cost. Eight farm organizations headed by the Grange pressed this view in an open letter to the President.

Amidst this deluge of unfriendly lament, the conference committee submitted its report to the House on May 9, 1940,<sup>63</sup> only to have it summarily recommitted, 209 to 182, with instructions to make three amendments. The Harrington amendment was to be restored. Provision for reduced rates for agricultural exports—so as to establish equality with industrial exports—was ordered. Finally a clause prohibiting any carrier from reducing rates below a “compensatory return” was demanded. Majority Leader Rayburn was unsuccessful in his efforts to persuade the Democratic majority to favorable action. After the vote to recommit, he forecast that there would be no railroad legislation during the session.

The bill still had unsuspected life, however. The conference committee resumed its labors and finally came to a second agreement on August 7, 1940. The Harrington amendment was put back in but with the provision that its application should be limited to four years. The reduced rates for agricultural exports was incorporated, but the restriction against lowering of rates was again left out. The new report<sup>64</sup> was agreed to without great delay in the House, 247 to 75. In the Senate the report was held up for almost a month. The opposition charged that the conference committee had exceeded its powers. Numerous other attempts were made to block action or at least to delay it until adjournment might accomplish the same objective. Finally on September 9, 1940, the conference report was approved 59 to 15.

The Transportation Act of 1940 is a good example of congressional handiwork. The headlines often went to the administration; the slightest remark from the President rarely failed to find repetition and amplification in the press. Almost the only time the general reading public heard about the railroad

63 H. Report 2016, 76th Cong., 3rd Sess., May 9, 1940.

64 H. Report 2832, 76th Cong., 3rd Sess., August 12, 1940.

bill was when the President said or did something that referred to it. The President's part in the final achievement of the legislation, almost two years after its initiation, was not unimportant. Yet the contribution of Congress was probably of greater significance to the future success of the act after its enactment.

The type of activity involved in the preliminary activities of congressional committees, working more or less upon their own initiative and under their own direction bears a direct and positive relationship to the quality and administrability of law resulting. Through its standing committee Congress supplies a better system of roots and tiny veins which through their capillary action eventually conduct nourishment and sustenance to the main trunk of the statutory organism than does any other agency. The President may perform an indispensable function in getting things done—action is the gift within his command. But Congress, through its committees, performs the equally indispensable function of determining what shall be done and this on the basis of unseen weeks, months, and years of study of the possibilities before decision is finally made.

## CHAPTER XII

### CONCLUDING OBSERVATIONS

IN the preceding pages, the legislative histories of ninety statutes have been dealt with in detail. On what basis can concluding observations be drawn? What type of classification will reveal most clearly any generalizations which seem appropriate as a result of the cumulative picture that has been built up? The simplest would be to catalogue each law according to the instrumentality which was chiefly responsible for its substance and passage. Under these circumstances, the legislation previously analyzed would fall into the following categories: laws in which the influence of the President was dominant; laws in which the influence of Congress was dominant; laws in which the influence of both the President and the Congress was sufficiently great that they must be given joint credit; and laws in which the influence of outside groups transcended that of either the President or the Congress. These categories are not absolute. Few laws are so unmixed in their origins that they can be arbitrarily catalogued in any one of the above categories without a bit of straining. To a certain extent any measuring stick which may be developed will be subjective. No single formula can be devised which when applied to widely varying combinations of legislative action will automatically produce the correct answer. Each law presents special problems. Although the chronology of events from introduction to ultimate approval may indicate a superficial similarity, significant factors vitally affecting the finished product frequently defy sharp identification.

The allocation attempted here is based upon a weighing of the relative influence of the Executive and Congress in its total effect upon the law in question. In some cases the initiative has lain with one but the preponderant influence in the completed statute has been ascribed to the other. Allocation is based upon a careful weighing of all the evidence. Unless the impact of the

Executive and Congress, judged in terms of its total effect upon the form, substance, and operation of the statute in question is sufficiently clear-cut to remove reasonable doubt, the dilemma has been avoided by classifying the act as joint. If this method is defective because it fails to accord sufficient weight to the more subtle factors which are at work in all legislative activity, it has the merit of removing doubtful allocations from the area of controversy and of restricting conclusions to those statutes about whose origins the facts are relatively well agreed. Every effort has been made to be consistent throughout and to apply the same measuring stick to every law.

The total number of laws attributed to outside interests or pressure groups calls for comment. As was pointed out in the introduction, the activity of outside interests is recognized as continuous and influential. To a certain extent, practically every law is affected by their labors. Quite properly, neither the President nor the Congress is oblivious to their presence nor immune from their powers of persuasion. When a law is classified as presidential or congressional, therefore, this does not mean that external pressures were absent or uninfluential. It does mean that in this particular instance the act in question owes much of its existence and not a little of its substance to that branch of government to which it has been attributed. Only where the pressure group had a major part in the actual processing has the act been classified as one in which pressure group influence was dominant.

No doubt there are some instances where the judgment drawn here has been limited by lack of information concerning matters which the written records do not reveal. Official sources, including the hearings, committee reports, and congressional debates, are not always as revealing as they are voluminous. Newspaper reports, commentators' columns, and the steadily increasing volume of memoirs, biographies, and "inside stories" frequently aid in filling in the gaps but they are usually anecdotal, fragmentary, and incomplete. They often give valuable leads but because they usually lack documentation

they cannot be accepted without qualification. In many cases the events leading up to the final passage of a law are largely public property, but more often this is not so. Even in the case of some of our most publicized laws surface manifestations have contributed to the confusion by creating popular impressions at variance with what actually took place. The Banking Act of 1933 and the National Labor Relations Act of 1935 are notable examples that have already been mentioned. Nor does an abundance of material necessarily simplify the task of identifying the contributors to a particular bill. In the case of the Federal Reserve Act of 1913 fully a half-dozen books have dealt, either wholly or in part, with its legislative history and have succeeded only in casting a cloud on the facts.

The following tabulation indicates the classification assigned each law as a result of the foregoing case studies.<sup>1</sup>

*Presidential Influence Preponderant*

Agriculture	:	1	Agricultural Adjustment Act of 1933*.
Banking	:	3	Silver Purchase Repeal Act of 1893; Emergency Banking Act of 1933; Gold Reserve Act of 1934*.
Business	:	3	Securities Act of 1933*; Securities and Exchange Act of 1934*; Public Utilities Holding Company Act of 1935*.
Credit	:	3	War Finance Corporation Act of 1918; Reconstruction Finance Corporation Act of 1932; Home Owners' Loan Corporation Act of 1933*.
Immigration	:	0	
Labor	:	1	Second Employers' Liability Act of 1908*.
National Defense	:	6	Militia Act of 1903; General Staff Act of 1903; Selective Service Act of 1917; Naval

<sup>1</sup> An asterisk indicates that one or more bills dealing with this subject had been introduced without administration support and had received substantial consideration in Congress before the administration took a definite position.

Construction Acts of 1901-1905; Naval Construction Act of 1916; Navy Act of 1938\*.

Natural : 0  
Resources

Railroads : 0

Tariff : 2 Underwood Act of 1913\*; Reciprocal Trade Agreements Act of 1934\*.

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*Congressional Influence Preponderant*

Agriculture : 2 Capper-Volstead Act of 1922\*; McNary-Haugen bills, 1924-1928\*.

Banking : 6 Currency Acts of 1873\*; 1878\*; 1890\*; 1900\*; 1908\*; Glass-Steagall Act of 1933\*.

Business : 1 Sherman Act of 1890\*.

Credit : 3 Federal Farm Loan Act of 1916\*; War Finance Corporation Revival Act of 1921\*; Agricultural Credits Act of 1923\*.

Immigration : 9 Chinese Exclusion Act of 1882\*; Chinese Exclusion Act of 1892\*; General Immigration Acts of 1882\*; 1903\*; 1907\*; 1913\*; 1917\*; 1921\*; 1924\*.

Labor : 3 Department of Labor Act of 1913\*; Second Child Labor Act of 1919\*; Norris-LaGuardia Act of 1932\*.

National : 4 National Defense Act of 1916\*; National Defense Act of 1920; Selective Service Act of 1940\*; Naval Disarmament Act of 1920-1921\*.

Natural : 2 Carey Act of 1894\*; Act of 1897\*.  
Resources

Railroads : 3 Interstate Commerce Act of 1887\*; Valuation Act of 1913\*; Transportation Act of 1920\*.

Tariff : 2 Wilson Act of 1894\*; Payne-Aldrich Act of 1909\*.

*Joint Presidential-Congressional Influence*

Agriculture	:	3	Agricultural Marketing Act of 1929*; Soil Conservation Act of 1936; Agricultural Adjustment Act of 1938*.
Banking	:	4	Federal Reserve Act of 1913*; Thomas Silver Amendment of 1933*; Silver Purchase Act of 1934*; Banking Act of 1935*.
Business	:	2	Clayton Act of 1914*; National Industrial Recovery Act of 1933*.
Credit	:	2	Federal Home Loan Bank Act of 1932*; Emergency Farm Mortgage Act of 1933*.
Labor	:	4	First Employers' Liability Act of 1906*; First Child Labor Act of 1916*; National Labor Relations Act of 1935*; Wages and Hours Act of 1938*.
National Defense	:	3	Army Act of 1901*; Naval Construction Act of 1929*; Naval Construction Act of 1934*.
Natural Resources	:	7	General Revision Act of 1891*; Newlands Act of 1902*; Weeks Act of 1911*; Migratory Bird Act of 1913*; Migratory Bird Treaty Act of 1918*; Migratory Bird Refuge Act of 1929*; Taylor Grazing Act of 1934*.
Railroads	:	4	Hepburn Act of 1906*; Mann-Elkins Act of 1910; Emergency Railroad Transportation Act of 1933; Transportation Act of 1940*.
Tariff	:	0	

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29*Pressure Group Influence Preponderant*

Labor	:	1	Railway Labor Disputes Act of 1926*.
Natural Resources	:	1	Clarke-McNary Act of 1924*.
Railroads	:	1	Elkins Act of 1903.
Tariff	:	4	McKinley Tariff Act of 1890*; Dingley Tariff Act of 1897*; Fordney-McCumber Tariff Act of 1922*; Hawley-Smoot Tariff Act of 1930.



Of the ninety major laws studied, approximately twenty per cent fall to the credit of the President; roughly forty per cent were chiefly the product of Congress; about thirty per cent fall into the joint presidential-congressional category; and slightly less than ten per cent are identified as primarily the handiwork of external pressure groups.

This tabulation demonstrates the joint character of the American legislative process. Significant as this fact is, the tabulation fails to reflect another aspect of congressional participation in legislation which is equally fundamental. By allocating each law to the instrumentality chiefly responsible for its passage in final form, it has not been possible to indicate the origin of the proposal in the first place. One of the points brought out most clearly by the case studies set forth in the preceding chapters was the depth of the legislative roots of most important statutes. For instance, a law is hailed as something new at the time of passage but further examination reveals that the proposal had been discussed more or less continuously in Congress for several years. Presidential attention had led to its elevation from the obscurity of just another bill to the prominence of an administration measure. Administrative experts had participated by drafting a new bill but there was not very much in the new bill that had not been present in one or more earlier drafts. At all events, driven by the power now behind it, the bill becomes law without great difficulty or delay, while in the absence of presidential action years might have gone by without its adoption. The law is allocated to the category of presidential influence because its passage in final form was certainly not assignable to any other instrumentality. But the influence of what had taken place in Congress cannot be ignored. Had the initial proposal not been introduced and discussed, the final act might not have come when it did or it might have emerged in quite a different form. There is no way in which this preliminary activity can be assessed and it would be futile to attempt its measurement but its importance

is genuine. It is at least possible to indicate which of the ninety laws included in this survey was the end product of a bill or bills initiated within Congress and the subject of hearings and discussions there prior to the events leading to its final passage.

Of the entire ninety laws no less than seventy-seven (marked with an asterisk) trace their ancestry directly to bills which originally had been introduced without administration sponsorship. These bills or their successors had been the subject of hearings and committee consideration for periods ranging from a few months to a dozen or more years before they had been passed with or without administration support. Presidential influence was dominant in the case of nineteen laws but twelve of these had been originally initiated by Congress and had been the subject of extensive hearings. Among the twenty-nine laws classified as the joint product of the President and Congress, twenty-six trace their origin to bills which had been introduced without benefit of administrative support and had served as the basis for committee hearings and discussion.

These figures do not support the thesis that Congress is unimportant in the formulation of major legislation. Rather, they indicate not that the President is less important than generally supposed but that Congress is more important.

An examination of the legislative history of the past ten years indicates a somewhat more one-sided distribution, but the influence of Congress was by no means negligible. Of the twenty-three laws in this survey which were passed since 1932, the President is credited with eight, Congress with only two and the President and Congress jointly with thirteen. When the backgrounds of these laws are examined, however, the contribution of Congress assumes substantial proportions. For example, the Agricultural Adjustment Act of 1933 may be classified as presidential but the struggle for farm legislation which virtually monopolized the attention of several sessions of Congress during the twenties had left its mark. The almost continuous series of hearings had provided a clearing house for the various agencies, governmental and private, which were

seeking some new formula for putting the farmer back on his feet. The domestic allotment plan of 1933 did not spring into being overnight. Its lineal ancestry can be traced directly back to the earlier plans of the McNary-Haugen era. Congress acted in response to executive pressure in its speedy approval of the agricultural adjustment bill, and it did so in spite of the opposition of the two committee chairmen, because the congressional mood at this time was one of cooperation. In this sense the priority of presidential influence was incontrovertible. On the other hand, the influence of previous congressional activity upon the substance of the bill requested by the President, while impossible to measure or weigh in exact terms, was no less important.

Similar influences can be pointed to in the case of the securities and exchange legislation of 1933-1934. The technical details of the two acts were not written in Congress, but the sentiment for regulation along these general lines had been a steadily growing thing for more than twenty years. The legislative history of the holding-company bill of 1935 reveals a parallel period of legislative pre-occupation preceding presidential concern. Moreover, in several instances where bills have been classified as joint in influence, it is Congress and not the President that deserves the lion's share of credit not only for originating the idea in the first place but also for the drudgery of grinding out the provisions of the bill itself. The National Labor Relations Act of 1933, the Fair Labor Standards Act of 1938, the Taylor Grazing Act of 1934, and the Transportation Act of 1940, all owe much of their present substance to the efforts of Congress.

Viewing the entire ninety laws from the standpoint of subject matter, what do the figures reveal? Can generalizations be made regarding the presence or absence of presidential domination in certain fields? What about Congress? Does its influence run chiefly to certain categories or does it cover the entire panorama? What has been the history of pressure group

dominance? Answers to these questions are suggested by the case studies.

The President has been consistently strong in the field of national defense legislation. Of the thirteen major laws included in this study six have clearly been the handiwork of the President or his representatives. (Secretary of War Elihu Root rather than Theodore Roosevelt was the focal point of two important army laws passed during the latter's administration.) Even in this admittedly executive domain, however, Congress has made contributions of vital importance. Of the four acts wherein its influence was paramount, two were particularly important. These two, the National Defense Act of 1916 and the Selective Service Act of 1940, came during pre-war periods and both occurred during the administrations of Presidents noted for their aggressive leadership. It is not only in post-war periods of reaction that congressional leadership comes to the fore. Neither do such events occur only when the White House is occupied by weak Presidents.

Of the six laws regulating business included in the survey, presidential influence dominated in the case of four. These figures are somewhat misleading, however, because all four of these laws came during the first two years of Franklin Roosevelt's administration. The National Industrial Recovery Act, the Securities Act, the Securities and Exchange Act, and the Public Utility Holding Company Act all bear the imprint of the President. Congress passed them by healthy majorities but they are what they are because the President backed them even though his decisions reflected the influence of earlier congressional activity. This is a break with the past for historically the President has not taken the lead in this field. The Sherman Act of 1890 was born without benefit of executive support. Despite the enthusiastic outbursts of Theodore Roosevelt about trust busting, no significant legislation was enacted during his stay in office. Wilson entered the White House with a program of business reform. The Clayton Act of 1914 and its sister statute, the Federal Trade Commission Act, may be cited

as evidence of his influence. But the Clayton Act, popular legend to the contrary notwithstanding, was not an unqualified presidential victory. While it probably could not have been passed without Wilson's support, the substance of the final product was at least as much the work of Congress as it was that of the administration.

Those areas in which the influence of the President has been noticeably weak are no less interesting. In five fields—agriculture, immigration, labor, natural resources, and railroads—presidential leadership has been unsteady. Six major statutes have been passed in the field of agriculture; of these only one, the Agricultural Adjustment Act of 1933, is credited to the President and then, as has been said, with qualifications. Two were primarily the work of Congress and three were the joint product of both. The most striking example of presidential weakness is found in the passage of immigration legislation. Ten important immigration acts have been passed during the period under study; not a single one of these has been substantially influenced by the President. Several of them have been outright defeats for him.

Only one of the nine important labor laws studied in this report owes its existence chiefly to the President. None of the ten laws dealing with natural resources conservation are credited principally to him. This seems surprising in view of the fact that Theodore Roosevelt's name is intimately associated with conservation in this country. Only one major conservation act, the Newlands Act of 1902, came during his administration. Roosevelt took a great interest in this bill, and his contribution to its final enactment was not inconsiderable. On the other hand, the contribution of Congress was not less important and any just appraisal must classify the measure as of joint parentage. Finally, the President has not been a powerful figure in railroad legislation. Major enactments in this category during the period under study total eight. Not one of these eight can be classified as primarily executive. Three of them—the Interstate Commerce Act of 1887, the Valuation

Act of 1913, and the Transportation Act of 1920—are listed as chiefly the work of Congress. The Hepburn Act of 1906, the Mann-Elkins Act of 1910, the Emergency Transportation Act of 1933, and the Transportation Act of 1940 came from both ends of Pennsylvania Avenue. Though the Elkins Act of 1903 came in the administration of Theodore Roosevelt, who was vitally interested in railroads, it was almost entirely the work of the railroads themselves.

In those areas where Congress has consistently played a major role, banking and currency and immigration stand out, with labor legislation only a few steps behind. Six acts—the Currency Act of 1873, 1878, 1890, 1900, and 1908; and the Glass-Steagall Banking Act of 1933—owe most of their substance to Congress. Four others: the Federal Reserve Act of 1913, the Thomas Amendment of 1933, the Silver Purchase Act of 1934, and the Banking Act of 1935 were as least as much influenced by Congress as by the President. In the case of the Banking Act of 1935, it was Federal Reserve Board Chairman Marriner S. Eccles rather than the President who held the central role; the bill was approved by Congress only after substantial modifications had been written into its provisions. Three statutes: the Silver Purchase Repeal Act of 1894, the Emergency Banking Act of 1933, and the Gold Reserve Act of 1934 are classified as executive. Only in the case of the first two, however, was the influence of Congress negligible. The Gold Reserve Act of 1934 was virtually extorted from the administration by pressure from within Congress.

Throughout the entire period under study immigration legislation has been the exclusive prerogative of Congress. From the initial steps toward developing our national policy in the early eighties congressional interest and activity have transcended that of the executive. When the President has attempted to impose his views he has received sharp rebuffs. The Act of 1913 became law over the veto of Taft; the Act of 1917 came into being under similar circumstances except that the President who suffered defeat this time was Wilson. The Act

of 1924 was signed by Coolidge only after he had tried unsuccessfully to have certain of its provisions eliminated. One may argue that American immigration legislation would have been improved had the President been able to make his influence felt. For our purposes that is a point on which an opinion need not be expressed. The record shows that whatever immigration policy we have is the handiwork of Congress and not of the administration.

The conspicuous position of Congress in labor legislation may occasion some surprise. Particularly since the New Deal the impression has prevailed that the President stood as labor's champion against an indifferent if not a hostile Congress. Events since 1939 have indeed followed a pattern not inconsistent with this impression. Nevertheless, the record shows that from the very beginning Congress has taken a more active part in legislating in the interest of labor than has the President and the record of the past ten years of New Deal hegemony has not upset the historic pattern. Nine major labor laws have been passed during the past forty years. Congress has been chiefly responsible for three of these: the Department of Labor Act of 1913, the Second Child Labor Act of 1919, and the Norris-LaGuardia Act of 1932. Four others were the joint product of President and Congress: the First Employer's Liability Act of 1906, the First Child Labor Act of 1916, the National Labor Relations Act of 1935, and the Fair Labor Standards Act of 1938. In the case of employers' liability, Congress had been at work on such legislation for several years before a bill was finally pushed through with the aid of President Theodore Roosevelt. His contribution was not only one of motive power; he also took an active interest in the substance of the bill and its final form was in part due to his efforts. So far as the other three laws are concerned, the story is quite different. Wilson finally threw his support behind the child labor bill and this was the deciding factor in its eventual passage. His aid was belated, however, and was supplied only after the real sponsors of the bill had surmounted many obstacles that would have never oc-

curred had he taken a strong position from the beginning. It is something less than fair to Congress to classify such a law as the joint product of President and Congress. A situation not essentially different accompanied the passage of the National Labor Relations Act when the admittedly indispensable presidential support was tardy in making itself felt. The history of the Wages and Hours Act presents a somewhat stronger record of executive participation. Of all the laws in this category it comes closest to being truly joint in authorship.

Natural resources legislation deserves special discussion. Analysis of the ten laws falling within this broad grouping indicates that seven have been the result of joint activity of the President and Congress. Actually, this is not quite the case. "Administrative agency" would be more accurate than "President." The fount of much of our most far-sighted conservation legislation has been the man or men charged with the administration of the particular activity in question. In some cases it has been as far up the hierarchy as the department head, a man of cabinet rank. Just as frequently it has come from farther down the pyramid. Often men at the bureau level have been the real inspiration of much needed law. Men such as these, working hand in hand with members of Congress on the one side and with representatives of private interests on the other, have been the real pioneers of America's stumbling efforts toward a conservation policy.

A final word on a field in which the outside interests have prevailed: tariff legislation. Eight major tariff acts have been passed during the last fifty years. Half of these have been almost completely dominated by pressure politics: the McKinley Act of 1890, the Dingley Act of 1897, the Fordney-McCumber Act of 1922, and the Hawley-Smoot Act of 1930. Two—the Wilson Act of 1894, and the Payne-Aldrich Act of 1909—were heavily influenced by Congress, more particularly individual congressmen. At the outset the Wilson Act was an embodiment of a principle—a tariff for revenue only. Before it became law it had been subjected to a withering attack by numer-



ous interest groups and much of its initial symmetry had been twisted out of shape by special concessions which its sponsors had been powerless to prevent. Even in this distorted condition the law retained a substantial proportion of its original substance. By comparison, at least, it can be stamped a congressional rather than a pressure group bill.

The Payne-Aldrich Act of 1909 is also classified as congressional, although its parentage was exceedingly complex. The original Payne bill was the answer of the House Ways and Means Committee to President Taft's plea for a general reduction of tariffs. As such it was written by the committee and it complied with the spirit of the President's message. By the time the bill emerged from the House it had lost some of its noble character, and when it reached the Senate Finance Committee it underwent almost total metamorphosis under the influence of Senator Aldrich and his associates. Its policy of moderation was transformed into a sharp restatement of the principle of protection. During Senate consideration representatives of special interests obtained so many additional increases in certain schedules that the bill lost all semblance of its original form. At the last moment President Taft interceded and managed to obtain a few relatively minor reductions in certain schedules. Viewing the bill as a whole, one may say that its final form seems to have rested chiefly with Congress.

Two tariff laws, the Underwood Act of 1913, and the Reciprocal Trade Agreements Act of 1934, are definitely presidential. These two instances are important chiefly because they demonstrate that tariff is no different from other legislation. When the President takes a strong stand and is willing to use the weapons of persuasion at his disposal, he can compete with the most powerful economic combines on more than equal terms.

The preceding pages fall short of being an unqualified tribute to Congress. It has upon occasion yielded ground to the Chief Executive; it has been guilty of rubber-stampism for brief intervals; on some of the occasions when it has insisted upon

making its influence felt the results have been unfortunate. Nevertheless, its record, even during the past ten years when its independence was at the ebb, compares not unfavorably with that of the President in terms of significant legislation achieved. The Banking Act of 1933, the National Labor Relations Act of 1935, and the Selective Service Act of 1940 have been inseparably bound up with the country's recent history. No three executively inspired laws hold a more prominent place. Furthermore, measured in terms of influence upon many of the administration's proposals which have ultimately become law, the impact of Congress has been consequential. In some instances congressional initiative spurred the President to action when he would have preferred to wait; in others presidential inactivity was compensated for by independent congressional action. But of even greater importance, viewed in terms of its long range effects, has been Congress's service as a center for the origination and maturing of innovative legislation.

Even the most severe critic of Congress would not deny that it has been sensitive to the ever-increasing areas demanding recognition by the Federal Government. Most of the great mass of regulatory legislation of the past decade, popularly dubbed New Deal legislation, had a well-defined prenatal history extending back several years before it was espoused by the Roosevelt administration. This is true not only of the more conventional fields such as banking, railroads, and taxation, but of the newer areas of social security, holding company regulation, and securities control. Congressional attention to these new fields had not been absent prior to the time the President made his specific recommendations. The normal process has been fairly uniform: an initial reference by one or a few individuals, then a gradually increasing volume of comment accompanied by numerous specific proposals coming from widely divergent sources. In some cases legislation results in a very short time, but more frequently the initial flurries of interest will subside, to be revived from time to time until finally culminating, perhaps with the help of the President, in a law.

The long germinative period detectable in the genesis of most laws is of the utmost importance: it constitutes one of the most valuable contributions that a legislative body can make. No other agency in a democracy is so well equipped by composition and organization to discharge this function. The accessibility of Congress, coupled with its ever-changing personnel, tends to guarantee a maximum of responsiveness to the varied but always moving currents of thought. One cannot examine the official records of a single session of Congress without being deeply impressed with the substantial contribution which the individual congressman frequently makes when it comes to locating the weaknesses and gaps in our legislative fabric and initiating action to fill the breach. The piecemeal character of our national legislative program which results from the individualistic nature of the initiation process has frequently been criticized for its lack of unity and coherence. Without arguing the accuracy of this assertion it does seem worthwhile to emphasize the unusual place the individual senator or representative holds in the sagas of many of our most valued laws. To go no further than the single field of labor legislation, such outstanding examples as those of Shipstead, Norris, and LaGuardia in anti-injunction legislation, Wagner in the field of collective bargaining, and Black in the regulation of wages and hours may be cited. These men were the authors as well as the sponsors of the bills and laws bearing their names. Had it not been for their persistent efforts and their unwillingness to give up in the face of administration indifference or hostility it is probable that even if the laws had eventually been passed their enactment would have been much longer delayed and their content would have been much less definite than they actually are. This is an important factor to bear in mind when attempting to allocate credit between the President and the Congress for legislation that has been passed. It frequently appears that the President is the initiating agent of a particular law when as a matter of fact he is little more than the conveyance—sometimes even

the reluctant one—upon it which it moves to fruition, and is not entitled to credit for anything more than that.

President Roosevelt's approach to the problem of legislative leadership was more imaginative than that of most of his predecessors. He was not only willing but also eager to make suggestions regarding the laws which he deemed necessary. Yet in several notable instances, e.g., the National Labor Relations Act and the Selective Service Act, even he demonstrated a strange reluctance to request or support legislation that was both necessary and desired. The simple fact is that presidential leadership has been and probably will continue to be uneven. Such being the case, the value of individual congressional initiative, whether as a stimulant or as an irritant, is and will continue to be exceedingly important.

Congress has been criticized for its inability to take a long-range, comprehensive view. Because of its method of selection, Congress is inclined toward localism rather than nationalism. The Executive, so it is said, has supplied a more integrated and better balanced point of view. Even if this is the case the atomized nature of the congressional approach to our legislative needs has supplied something without which executive leadership would be less effective.

From the half-thousand individualists who make up the two houses of Congress the annual harvest of legislative proposals continues uninterrupted. That many of these ideas may be impractical is beside the point. The constant replenishment of the supply is the important thing. This inexhaustible flood of observations, suggestions, and proposals constitutes a fairly accurate barometer of prospective as well as prevailing pressures. General concern with any particular aspect of our economy is usually preceded by a gradually increasing tide of comment in Congress. From these suggestions come not only the stimulus for positive action but also much of the substance that will eventually become law.

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